SENATE.

SATURDAY, *August 19, 1911.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings when, on request of Mr. BRANDEGEE and by unanimous consent, the further reading was dispensed with and the Journal was approved.

PENSACOLA NAVY YARD.

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Navy transmitting, in response to a resolution of the 27th ultimo, certain information relative to the issuance of orders respecting the navy yard at Pensacola, Fla., and also the work done at that navy yard within the last two fiscal years, etc., which was referred to the Committee on Naval Affairs and ordered to be printed. (S. Doc. No. 103.)

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the bill (S. 3253) to authorize the counties of Yell and Conway to construct a bridge across the Petit Jean River.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H. R. 13276) to provide for the disposal of the present Federal building site at Newark, Ohio, and for the purchase of a new site for such building.

The message further announced that the House insists upon its amendment to the bill (S. 943) to improve navigation on Black Warrior River, in the State of Alabama; agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SPARKMAN, Mr. TAYLOR of Alabama, and Mr. LAWRENCE managers at the conference on the part of the House.

The message also announced that the President of the United States, having returned to the House of Representatives, in which it originated, the bill (H. R. 4413) to place on the free list agricultural implements, cotton bagging, cotton ties, leather, boots and shoes, fence wire, meats, cereals, flour, bread, timber, lumber, sewing machines, salt, and other articles, with his objections thereto, the House had proceeded, in pursuance of the Constitution, to reconsider the bill and resolved that it do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice President:

S. 3253. An act to authorize the counties of Yell and Conway to construct a bridge across the Petit Jean River;

H. R. 13276. An act to provide for the disposal of the present Federal building site at Newark, Ohio, and for the purchase of a new site for such building; and

H. R. 13391. An act to increase the cost limit of the public building at Lynchburg, Va.

PETITIONS AND MEMORIALS.

Mr. BRANDEGEE presented a memorial of Local Division No. 1, Ancient Order of Hibernians, of Torrington, Conn., and a memorial of Local Division No. 2, Ancient Order of Hibernians, of Wallingford, Conn., remonstrating against the ratification of the treaty of arbitration between the United States and Great Britain, which were ordered to lie on the table.

Mr. BRISTOW presented an affidavit in support of the bill (S. 2966) granting an increase of pension to Lucy E. Culp, which was referred to the Committee on Pensions.

BILLS AND JOINT RESOLUTION INTRODUCED.

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BACON:

A bill (S. 3266) for the relief of the trustees of the First Baptist Church of Rome, Ga.; to the Committee on Claims.

By Mr. POINDEXTER:

A bill (S. 3267) granting an increase of pension to Elizabeth Otis; to the Committee on Pensions.

By Mr. CURTIS:

A bill (S. 3268) granting a pension to Frances A. Beard;

A bill (S. 3269) granting an increase of pension to Othello A. Sherman;

A bill (S. 3270) granting an increase of pension to Richard Burnside;

A bill (S. 3271) granting an increase of pension to Alfred T. Seaman; and

A bill (S. 3272) granting an increase of pension to Alva M. Cunningham (with accompanying papers); to the Committee on Pensions.

By Mr. JOHNSTON of Alabama (for Mr. PAYNTER):

A bill (S. 3273) for the relief of Charles Sharp; to the Committee on Military Affairs.

By Mr. SIMMONS:

A bill (S. 3274) granting an increase of pension to Jamerson S. Tweed; to the Committee on Pensions.

Mr. SIMMONS. Mr. President, a few days ago I introduced a bill, being S. 3229, granting an increase of pension to Robert B. Courts. I find there is a mistake in the bill, and I ask to withdraw it and introduce in lieu thereof the bill which I send to the desk.

The VICE PRESIDENT. Without objection, the former bill is withdrawn, and the Senator from North Carolina, without objection, introduces a bill, the title of which will be read.

The bill (S. 3275) granting a pension to Robert B. Courts, was read twice by its title and referred to the Committee on Pensions.

By Mr. STONE:

A bill (S. 3277) for the relief of Pinkie West, administratrix of the estate of J. J. West, deceased (with accompanying papers); to the Committee on Claims.

A bill (S. 3278) granting an increase of pension to Perry C. Quinn (with accompanying paper);

A bill (S. 3279) granting an increase of pension to Joseph B. Ehrenman (with accompanying paper);

A bill (S. 3280) granting an increase of pension to John Stone (with accompanying paper);

A bill (S. 3281) granting an increase of pension to James Enloe;

A bill (S. 3282) granting an increase of pension to Catherine R. Rice;

A bill (S. 3283) granting an increase of pension to Christopher S. Alvord;

A bill (S. 3284) granting an increase of pension to Thomas W. Gardner;

A bill (S. 3285) granting an increase of pension to James A. Love;

A bill (S. 3286) granting a pension to Thomas Kelley; and

A bill (S. 3287) granting a pension to George Treece; to the Committee on Pensions.

By Mr. CURTIS:

A joint resolution (S. J. Res. 58) to pay the officers and employees of the Senate and House of Representatives their respective salaries for the month of August, 1911, on the 23d day of said month; to the Committee on Appropriations.

TRAVELING EXPENSES OF CERTAIN EMPLOYEES.

Mr. HEYBURN. I offer the following resolution and ask for its present consideration.

The resolution (S. Res. 142) was read, as follows:

Resolved, That the traveling expenses of one clerk, stenographer, or other employee of the Senate accompanying each Senator to his home State in connection with his official duties during the recess of Congress is hereby authorized; the same to be paid out of the contingent fund of the Senate, until otherwise provided by law, upon vouchers approved by the Senator with whom such person is employed.

Mr. SMOOT. I should like to ask the Senator from Idaho if there has not already been a joint resolution passed——

The VICE PRESIDENT. The Chair thinks that under the statute the resolution must go to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. SMOOT. Yes.

Mr. HEYBURN. I have had an estimate made. It involves a very small amount—probably two or three thousand dollars—but it is something we should do. It merely provides for the traveling expenses of one of the force of a Senator, and I think it solves a vexed question. We can not have joint action in the matter.

Mr. SMOOT. Is the Senator sure that the House is not going to concur in the action of the Senate in passing the joint resolution?

Mr. HEYBURN. I am. That is, I am as sure as we can be sure of such things. I have made inquiry. I only hoped that they would.

Mr. SMOOT. I think, however, under the rule the resolution will have to go to the Committee to Audit and Control the Contingent Expenses of the Senate.

The VICE PRESIDENT. Under the statute, as the Chair recollects it, the resolution must go to that committee.

Mr. HEYBURN. Let it go to the committee.

The VICE PRESIDENT. The resolution will be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

COTTON CROP STATISTICS.

Mr. SMITH of South Carolina. Mr. President, I introduced a resolution (S. Res. 140) yesterday in reference to the cotton crop report, and it was referred to the Committee on Agriculture and Forestry. I should like to state that after conference with the proper authorities we think the matter has been satisfactorily arranged, and therefore I will not press the resolution further.

FREE LIST AND WOOL BILLS (S. DOCS. NOS. 102 AND 101).

Mr. SMOOT. I ask unanimous consent that the free-list bill, together with the veto message of the President thereon, and also the wool bill and the veto message of the President of the United States thereon, be printed separately as Senate documents.

There being no objection, the orders were reduced to writing and agreed to, as follows:

Ordered, That the special message of the President of the United States returning without approval H. R. 4413, "An act to place on the free list agricultural implements, cotton bagging, cotton ties, leather, boots and shoes, fence wire, meats, cereals, flour, bread, timber, lumber, sewing machines, salt, and other articles," together with the bill as passed by Congress, be printed as a Senate document.

Ordered, That the special message of the President of the United States returning without approval H. R. 11019, "An act to reduce the duties on wool and manufactures of wool," together with the bill as passed by Congress, be printed as a Senate document.

CHUGACH FOREST LANDS IN ALASKA.

Mr. POINDEXTER submitted the following concurrent resolution (S. Con. Res. 9), which was read and referred to the Committee on Printing:

Resolved by the Senate (the House of Representatives concurring), That there be printed 3,000 copies of Senate Document No. 77, "Chugach National Forest Lands in Alaska," parts 1 and 2, message from the President of the United States in response to Senate resolution of June 27, 1911, 1,000 copies for the use of the Senate and 2,000 copies for the use of the House of Representatives.

WILLIAM W. HORNE.

Mr. BACON submitted the following resolution (S. Res. 143), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Secretary of the Senate is hereby authorized and directed to continue in the service of the Senate, in addition to the present force, William W. Horne as assistant engrossing and enrolling clerk, at a compensation at the rate he is now receiving, to be paid from the contingent fund of the Senate until otherwise provided by law.

PRESIDENTIAL APPROVALS.

A message from the President of the United States by Mr. Latta, executive clerk, announced that the President had approved and signed the following acts:

On August 18, 1911:

S. 1785. An act to amend section 647, chapter 18, Code of Law for the District of Columbia, relating to annual statements of insurance companies.

On August 19, 1911:

S. 2055. An act to provide for the purchase of a site and the erection of a new public building at Bangor, Me., also for the sale of the site and ruins of the former post-office building;

S. 3052. An act granting leave to certain homesteaders; and

S. 306. An act to confirm the name of Commodore Barney Circle for the circle located at the eastern end of Pennsylvania Avenue SE., in the District of Columbia.

LOANS IN THE DISTRICT OF COLUMBIA.

The VICE PRESIDENT. The morning business is closed, and the calendar is in order under Rule VIII.

The bill (S. 25) to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, pawnbrokers, and real-estate brokers in the District of Columbia was announced as first in order on the calendar.

Mr. HEYBURN. I ask that the bill may go over.

The VICE PRESIDENT. It will go over.

Mr. CURTIS. I move that the Senate proceed to the consideration of the bill.

The VICE PRESIDENT. The Senator from Kansas moves that the Senate proceed to the consideration of the bill, the objection of the Senator from Idaho to the contrary notwithstanding. The question is on the motion of the Senator from Kansas.

The motion was agreed to, and the Senate, as in Committee of the Whole, resumed the consideration of the bill.

The VICE PRESIDENT. The Secretary will report the pending amendment.

The SECRETARY. The pending amendment is the amendment of the Committee on the District of Columbia—the third amendment of the committee, found at the bottom of page 6. On page 6, line 24, afer the word "person," the committee report to insert the following proviso:

Provided, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this act, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government violating any of the provisions of this act shall forfeit his office or position, and be removed from the same.

The VICE PRESIDENT. Without objection, the amendment is agreed to. No objection is heard. This is the last committee amendment.

Mr. CURTIS. In view of an objection that was urged against the bill, I offer the following amendment to come in at the end of section 1.

The VICE PRESIDENT. The Senator from Kansas offers an amendment, which the Secretary will report.

The SECRETARY. Add at the end of section 1, page 2, line 17, following the words "District of Columbia," the following proviso:

Provided, That nothing herein shall be construed so as to prevent any individual from loaning his own money at a rate of interest not to exceed 10 per cent per annum.

The VICE PRESIDENT. Without objection, the amendment will be agreed to.

Mr. HEYBURN. There was some confusion; I will ask that the amendment be read again.

The VICE PRESIDENT. The Secretary will again read the amendment. The Senate will please be in order.

The Secretary read as follows:

Provided, That nothing herein shall be construed so as to prevent any individual from loaning his own money—

Mr. HEYBURN. Just there—that should not be limited to the personal pronoun "his." Money is loaned by others than men. It should say "any person," and then the language should be adjusted.

Mr. CURTIS. I beg pardon; I did not hear the Senator.

Mr. HEYBURN. The language should be so adjusted as to include persons of either sex, and should not use the personal pronoun "his."

Mr. CURTIS. I have no objection to that modification of the amendment.

Mr. BURTON. There was some confusion. I ask unanimous consent that the amendment be again read.

The VICE PRESIDENT. Without objection, the Secretary will again read the amendment.

The Secretary again read Mr. CURTIS's amendment.

Mr. HEYBURN. It is not sufficiently definite to eliminate the objection that was urged on the former occasion in regard to the license. The amendment should go further and say that no license shall be required of persons loaning their own money.

Mr. CURTIS. I am perfectly willing to accept that modification.

Mr. HEYBURN. I will ask that the amendment be amended by adding "that no person shall be required"——

Mr. CURTIS. That no such person.

Mr. HEYBURN. Yes; "that no such person shall be required to obtain a license for engaging in such business." I think that would probably fit in there. Let us see how the proviso now reads.

The VICE PRESIDENT. The Secretary will read the amendment as it has been modified.

The SECRETARY. As thus amended, it would read:

Provided, That nothing herein shall be construed so as to prevent any individual from loaning the money of such individual at a rate of interest not to exceed 10 per cent per annum, and no such person shall be required to obtain a license for engaging in such business.

Mr. HEYBURN. The language is not very smooth.

The VICE PRESIDENT. The question is on agreeing to the amendment as modified. If there is no objection, the amendment as modified is agreed to.

The bill was reported to the Senate as amended and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. HEYBURN. I wish to know if the RECORD shows that I voted against the passage of the bill.

The VICE PRESIDENT. The RECORD will show the statement now made by the Senator.

Mr. HEYBURN. That I voted? I voted "no."

The VICE PRESIDENT. It will show that the Senator stated that he voted "no." Of course, it would require the statement for the RECORD to show on a viva voce vote.

ANNIE M. MATTHEWS.

Mr. JOHNSTON of Alabama. I ask unanimous consent for the present consideration of the bill (H. R. 11545) to authorize and direct the Commissioners of the District of Columbia to place the name of Annie M. Matthews on the pension roll of the police and firemen's pension fund.

The VICE PRESIDENT. The bill will be read for the information of the Senate.

The Secretary read the bill, and, there being no objection, it was considered as in Committee of the Whole. It directs the Commissioners of the District of Columbia to place on the pension roll of the police and firemen's pension fund the name of Annie M. Matthews, mother of Hugh C. Matthews, late private, Metropolitan police force of the District of Columbia, at the rate of $25 per month.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MONUMENT TO GEN. GEORGE ROGERS CLARK.

Mr. SMOOT. I ask unanimous consent for the present consideration of the bill (S. 1327) to provide for the selection and purchase of a site for and erection of a monument or memorial to the memory of Gen. George Rogers Clark.

The Secretary read the bill, and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported from the Committee on the Library with amendments.

The first amendment was, in section 1, page 2, line 10, after the name "George Rogers Clark," to strike out "subject to the approval of Congress," so as to make the section read:

That William H. Taft, Theodore Roosevelt, John M. Harlan, CHAMP CLARK, and Thomas R. Marshall be, and they are hereby, created a commission to be known as the Clark Monument or Memorial Commission to select and procure a location at some point in Jefferson County, Ky., and to select a plan and design for a monument or memorial to be erected in said county to the memory of Gen. George Rogers Clark.

The amendment was agreed to.

The next amendment was, in section 3, page 2, line 19, after the word "upon," to strike out "and approved by Congress," so as to read:

That this construction shall be entered upon as speedily as practicable after the plan and design therefor is determined upon, and shall be prosecuted to completion under the direction of said commission.

The amendment was agreed to.

The next amendment was, in section 3, page 2, line 23, before the word "thousand," to strike out "three hundred" and insert "one hundred and fifty," so as to read:

And the Secretary of War, under a contract hereby authorized to be entered into by said Secretary in a total sum not exceeding $150,000.

The VICE PRESIDENT. The question is on the amendment reported by the committee.

Mr. HEYBURN. Mr. President, has the amendment reducing the amount of the appropriation for this purpose been considered and agreed to? That is a stingy sum for the purpose of erecting a monument for George Rogers Clark.

Mr. SMOOT. The committee agreed upon the amount of $150,000, instead of $300,000, and reported favorably for that amount. They thought that a monument could be erected for that sum.

Mr. HEYBURN. It can be if you will erect a little monument such as I have seen sometimes; but I think the committee fail to comprehend the dignity of the services of this man in his age and time. I am sorry they felt called upon to diminish the sum. They should have increased it rather than diminished it.

The VICE PRESIDENT. Without objection, the amendment is agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was rejected.

CLAIMS OF SETTLERS IN SHERMAN COUNTY, OREG.

Mr. BOURNE. I ask unanimous consent for the present consideration of the bill (S. 295) to adjust the claims of certain settlers in Sherman County, Oreg.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Claims with an amendment.

Mr. BURTON. I should like to ask the nature of those claims?

Mr. BOURNE. They are claims that were ascertained by the Secretary of the Interior, under the direction of Congress.

Mr. BURTON. What is their nature?

Mr. BOURNE. Their nature is this: In 1864 the United States made a grant of land to the Northern Pacific Railroad Co. in aid of the construction of a railroad. Three years later, in 1867, the United States made a grant of lands to the State of Oregon in aid of the construction of a military wagon road, and this grant was conveyed by the State to The Dalles Military Wagon Road Co. These two grants overlapped in Sherman County, Oreg.

The Northern Pacific Co. did not build the line, as contemplated, through Sherman County, and in 1890 Congress passed an act declaring the grant forfeited in certain portions, including that portion known as the overlap.

This forfeiture having been declared, the Department of the Interior declared the lands open to entry, holding that the grant in aid of a military wagon road never attached to that portion of the land included in the overlap. The settlers whose claims are now before Congress went upon the lands, built homes, improved their property, and complied generally with the homestead laws.

Litigation between settlers and the Eastern Oregon Land Co., successor to the wagon road company, ensued, and after years of uncertainty the United States Supreme Court decided in favor of the grant.

Mr. BURTON. Which grant?

Mr. BOURNE. The wagon road grant.

These settlers, who had relied upon the order of the Secretary of the Interior restoring these lands to entry, were therefore either ousted entirely or compelled to protect themselves by purchasing title from the land company. Their claim is based upon the fact that they were misled by the action of the Department of the Interior in declaring these lands subject to entry.

As stated in the letter which the Secretary of the Interior recently addressed to the Committee on Claims, the question as to relief for these settlers has heretofore been considered by Congress, and the Senate Committee on Public Lands has made two reports thereon, known as Senate Document No. 8, Fifty-sixth Congress, second session, and Senate Document No. 240, Fifty-seventh Congress, first session. The first of these reports contains merely a list of the lands affected, date and number of entry, amount paid to the Government, name of entryman, date of cancellation, and so forth, all information evidently gathered from the records of the General Land Office. The second report contains a list of claimants, description of land, and so forth, and copies of affidavits.

In 1904 Congress passed an act directing an investigation of the claims of the settlers referred to, the object of the investigation being, as stated by Secretary of the Interior Hitchcock, "to gather such information as will form a basis for legislation for the relief of those who, misled by the erroneous action of this department in restoring lands the property of the wagon road company, went thereon, made valuable improvements," and so forth.

The investigation thus authorized was made by Special Agent T. B. Neuhausen, aided by the register and receiver of the local land office, and by conferences with Assistant Attorney Francis W. Clements, of the Interior Department, and James I. Parker, Chief of Lands and Railroads Division of the Department of the Interior, the latter two having been detailed for such service.

In conducting this investigation Mr. Neuhausen held public hearings, after giving adequate notice, and also personally visited and inspected a large portion of the lands and improvements. He also secured the assistance of three prominent and disinterested men familiar with the land, who aided in estimating values.

The thoroughness and reliability of this investigation is not only apparent from the records but is asserted in the letter of Secretary Ballinger to the Claims Committee under date of January 27, 1910.

I will say to the Senator that this bill was taken up and passed by the Senate under a favorable recommendation from the Committee on Claims at the last session.

Mr. BURTON. That is, the Senate passed a bill to reimburse these homesteaders?

Mr. BOURNE. Yes; subject to the report made through the Department of the Interior.

Mr. BURTON. Does this bill have the same reservation?

Mr. BOURNE. Absolutely. It is just the same bill that was passed by the Senate at its last session, except that an amendment is offered at this time still further restricting it, so that no assignees shall receive more than the amount that they actually paid on the assignment of the claims to them.

Mr. BURTON. With or without interest?

Mr. BOURNE. Without interest.

Mr. BURTON. It is a case, then, in which homesteaders went on the property supposing it to be the property of the United States?

Mr. BOURNE. On the invitation of the Secretary of the Interior, assuming that the Government had title to the land, but by a subsequent decision of the Supreme Court it was held that the title to this land was not in the Government, but was in The Dalles Military Wagon Road Co.

Mr. BURTON. Under a grant from the State of Oregon or from the United States?

Mr. BOURNE. A grant of the United States to the State of Oregon, and from the State of Oregon to the Military Wagon Road Co.

Mr. BURTON. Has this bill received the approval of the Interior Department?

Mr. BOURNE. So far as the facts are concerned it has; then it is left to the discretion of Congress. The report of the Interior Department is submitted in the report made by the committee.

Mr. BURTON. The report is silent, is it, upon the question of paying these parties?

Mr. BOURNE. They can not act upon that. The report states, however, that it is impossible to get any more reliable data than that which was secured through the efforts of the Interior Department.

Mr. BURTON. I take it these homesteaders were compelled to pay or else——

Mr. BOURNE. They were ousted, of course.

Mr. BURTON. They were included in this claim, and were compelled to pay this Wagon Road Co. their price?

Mr. BOURNE. Or get off the land; be ousted; yes, sir.

The VICE PRESIDENT. The Secretary will state the amendment reported by the committee.

The SECRETARY. In section 1, page 2, line 15, after the word "purchase," the committee propose an amendment to insert "*Provided further*, That no purchaser or assignee of any of said claims shall receive therefor a greater amount than was paid to the settler for his assignment," so as to make the section read:

That to adjust the claims of Harry Hill and other settlers, commonly known as the Sherman County settlers, on lands in Sherman and adjoining counties in the State of Oregon, there be, and hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $250,000, or so much thereof as may be necessary, said sum to be paid in such amounts and to such persons, their heirs or legal representatives, as are mentioned in the report made by Special Agent Thomas B. Neuhausen, of the Department of the Interior, under authority of the act of Congress approved February 26, 1904 (33 Stats., p. 51), as embodied in pages 22 to 35, inclusive, of House document No. 36, Fifty-eighth Congress, third session; the amount to be paid to each settler, his heirs or legal representatives, being the value of the land settled on by each, respectively, together with the value of the improvements erected by each, respectively, where such improvements were not sold or removed by the settler: *Provided, however*, That in those cases where the settler purchased land from The Dalles Military Road Co., or its successors, the amount to be paid to such settler, his heirs or legal representatives, shall be the amount so paid by him as consideration in his said purchase: *Provided further*, That no purchaser or assignee of any of said claims shall receive therefor a greater amount than was paid to the settler for his assignment.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

MONUMENT TO GEN. WILLIAM CAMPBELL.

Mr. MARTIN of Virginia. I ask unanimous consent for the present consideration of the bill (S. 1098) for the erection of a monument to the memory of Gen. William Campbell.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to appropriate $25,000 to erect in the town of Abingdon, Va., a statue to the memory of Gen. William Campbell and comrades, and provides that a suitable inscription shall be made thereon, under the direction of the Secretary of War, to the memory of Gen. William Campbell and the heroes of the Battle of Kings Mountain, which destroyed one wing of the British Army and largely contributed to the defeat and surrender of Lord Cornwallis at Yorktown; and the Secretary of War is empowered to select a site for the statue authorized by this act on the ground belonging to the Government.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

HIWASSEE RIVER BRIDGE AT CHARLESTON, TENN.

Mr. TAYLOR. I ask unanimous consent for the present consideration of the bill (H. R. 7263) to authorize the counties of Bradley and McMinn, Tenn., by authority of their county courts, to construct a bridge across the Hiwassee River at Charleston and Calhoun, in said counties.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the While, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

SNAKE RIVER BRIDGE AT NYSSA, OREG.

Mr. HEYBURN. Mr. President, there is a bridge bill which I should like to have passed. It will take but a moment. I ask unanimous consent for the present consideration of the bill (H. R. 7690) to authorize the construction of a bridge across the Snake River at the town of Nyssa, Oreg.

The Secretary read the bill, and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MAINTENANCE OF ILLEGITIMATE CHILDREN IN THE DISTRICT.

Mr. POMERENE. I ask unanimous consent for the present consideration of the bill (S. 2792) to provide for the support and maintenance of bastards in the District of Columbia.

The VICE PRESIDENT. The Secretary will read the bill for the information of the Senate.

The Secretary proceeded to read the bill.

Mr. HEYBURN. Mr. President, I think that bill had better go over. That first clause in it would seem to me to make it impossible to consider that bill.

The VICE PRESIDENT. Objection is made.

PERSONAL EXPLANATION.

Mr. LA FOLLETTE obtained the floor.

Mr. BANKHEAD. Mr. President——

The VICE PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Alabama?

Mr. LA FOLLETTE. I yield if the Senator from Alabama desires to offer some bill for consideration.

Mr. BANKHEAD. Mr. President, I desire to rise to a question of personal privilege.

The VICE PRESIDENT. The Senator from Alabama will state it.

Mr. BANKHEAD. Mr. President, the Washington Times yesterday printed an editorial headed "Democratic treachery in the Senate." I do not intend to ask the Secretary to read the editorial because I do not want to pollute the RECORD. In the same issue of the Times appears an article which purports to give the proceedings in the Democratic conference held for the purpose of reaching an agreement as to legislative procedure. I am going to ask the Secretary to read the paragraph which I have marked.

The PRESIDING OFFICER (Mr. MARTINE of New Jersey in the chair). There being no objection, the Secretary will read the article.

The Secretary read as follows:

[From the Washington Times, Friday, Aug. 18, 1911.]

Senator BANKHEAD took the view that Leader UNDERWOOD in the House did not want the insurgent-Democratic program carried out and did not want steel revision linked to cotton as proposed by the insurgent-Democratic alliance. A committee went to see UNDERWOOD, and found that, on the contrary, UNDERWOOD was willing to have the arrangement carried out.

Mr. BANKHEAD. Mr. President, the paragraph just read contains exactly the opposite of what I said and the position that I took in the conference. I stated unhesitatingly to my Democratic colleagues that I favored a revision of the cotton schedule, and that I favored the steel schedule as it had been presented as an amendment to the cotton bill. I stated further that I had had a conference with Mr. UNDERWOOD, and that he had requested me to say to the Democratic conference that he had no objection whatever to placing the steel schedule on the cotton bill, or any other schedule that they desired to put upon it which would revise the tariff schedules downward. He said he had no objection, but, on the contrary, he would be delighted if such a course should be pursued.

I should not make reference to this article if it were not for the fact that it puts me in the attitude of misrepresenting to the conference Mr. UNDERWOOD'S views. So far as I know, or am advised, no committee waited upon Mr. UNDERWOOD for the purpose of obtaining his views. I went to him as his personal friend of 20 years' standing. I have always enjoyed his friendship and his confidence, and I knew that when I went to him for his real, true position on this question he would give it to me. I went voluntarily, without any action on the part of the caucus and without the knowledge of the conference, so far as I know.

I thought I owed it to myself, that I owed it to Mr. UNDERWOOD, and that I owed it to Senators who were not present in that conference to state what was my attitude and what really happened.

PROPOSED DEPARTMENT OF PUBLIC HEALTH.

Mr. OWEN. I ask to have printed in the RECORD a letter from Mr. B. O. Flower, defending himself against some comments I made in the Senate some time ago.

Mr. Flower has been very active in the progressive movement and I have great respect for him, although I think he is grossly misled in his opposition to a department of health.

The PRESIDING OFFICER. Without objection, the letter will be printed in the RECORD.

The letter is as follows:

EDITORIAL DEPARTMENT
THE TWENTIETH CENTURY MAGAZINE,
Boston, Mass., August 15 1911.

Hon. ROBERT L. OWEN,
United States Senate, Washington, D. C.

MY DEAR SENATOR OWEN: In your address delivered in the Senate on June 23 on "Race Conservation" you quoted an editorial atack on the National League for Medical Freedom which appeared in Collier's Weekly, and which contained some matter relative to myself, as president of the league, that was clearly misleading in character and calculated to injure me and the league. Not believing that you would intentionally give publicity to matter of this character calculated to discredit me, I earnestly request that you place the following statement in the RECORD:

In 1889 I founded the Arena and became its sole editor, and have since that time devoted my whole energies to literary work and the furtherance, so far as lay in my power, of the principles of fundamental democracy and social justice, while resolutely battling against all forms of privilege and oppressive monopoly; and during this time I have not invested in nor have I received a dollar from any proprietary medicine or drug interest. Again, in regard to the effort of Collier's to injure me by attacking a relative, I would say that I have not had any business connections with the party in question for 20 years, nor has he at any time been even remotely connected with the league. More than this, long before the National League for Medical Freedom was thought of, no relative of mine, to the best of my knowledge, was engaged in or had any interest in any proprietary medicine business. Furthermore, my position in regard to proprietary medicines has been outspoken and unequivocal. I have urged that the people have a right to know what they are taking and that the contents of the bottles should be published on the wrappers, with heavy penalties for any misstatements of facts; that if medicines containing poisons or habit-forming drugs should be permitted to be placed on the market, they should be compelled to carry poison labels stating the name and exact amount of the drug contained in each package. On the subject of pure-food laws I think there are few editors in the land who have more persistently and aggressively fought for pure-food legislation than have I. In the Arena, the Twentieth Century, and elsewhere my voice has always been raised on the side of pure food. Again, the implication that though I am the responsible president or head of the league I am ignorant of the sources of our financial or other aids is naturally enough very obnoxious to me, because it indicates that I have recklessly made affidavits in regard to matters about which I have no personal knowledge, and also that I am a figurehead rather than an active and responsible officer, while as a matter of fact I, together with every other director of the league, have given careful personal attention to all the grave questions with which it has had to grapple. I know of no body of men who have shown a greater realization of the duty and responsibility of their position than have all of our directors, and it has been our custom to bring up all matters of importance and have them thoroughly discussed and decided upon before any action has been taken. In one of our earliest meetings it was unanimously agreed that the league would under no circumstances receive financial or other aid from manufacturers of proprietary medicines. Moreover, my position insisting on the publication of the formulæ of proprietary medicines alone would naturally have prevented our receiving assistance from this quarter, even had the league taken no united stand in regard to the question; while the claim that the league ever favored, directly or indirectly, the adulterators of food, is also wholly without foundation.

Had I been less intimately associated with the transactions of our league and the position of our directors in regard to these things I should not have presumed to take the positive stand which I have. Hence, naturally enough, I feel keenly the implications which call in question my sworn statements touching the position of the league in regard to both proprietary medicines and pure food.

Respectfully, yours,
B. O. FLOWER.

PROTECTION OF TRADE AND COMMERCE.

Mr. LA FOLLETTE. I introduce a bill which I ask may be read at length.

The bill (S. 3276) to further protect trade and commerce against unlawful restraints and monopolies was read the first time by its title and the second time at length, as follows:

Be it enacted, etc., That the act approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," is hereby amended by adding thereto the following:

"SEC. 9. Wherever in any suit or proceeding, civil or criminal, brought under or involving the provisions of this act, it shall appear that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists, which was or is in any respect or to any extent in restraint of trade or commerce among the several States or with foreign nations, the burden of proof to establish the reasonableness of such restraint shall be upon the party who contends that said restraint of trade is reasonable.

"SEC. 10. Whenever in any suit or proceeding, civil or criminal, brought under or involving the provisions of this act it shall appear that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists, which was or is in any respect or to any extent in restraint of trade or commerce among the several States or with foreign nations, such restraint shall be conclusively deemed to have been or to be unreasonable and in violation of the provisions of this act as to any party thereto—

"A. Who in carrying on any business to which such contract, combination, or conspiracy relates or in connection therewith;

"(*a*) As the vendor, lessor, licensor, or bailor of any article attempts to restrain or prevent in any manner, either directly or indirectly, any vendee, lessee, licensee, or bailee from purchasing, leasing, licensing, or obtaining such article, or any other article from some other person, or using such article or any other article obtained from some other person, whether such attempt (first) be made by an agreement or provision, express or implied, against such purchase, lease, license, or use, or (second) be made by a condition in the sale, lease, license, or bailment against such purchase, lease, license, or use, or (third) be made by imposing any restriction upon the use of the article as sold, leased, licensed, or bailed, or (fourth) be made by making in the price, rental, or license, any discrimination based upon whether the vendee, lessee, licensee, or bailee purchases, hires, or becomes a licensee of, or uses any article made, sold, licensed, leased, or furnished by some other person, or (fifth) be made in any other manner except in ordinary solicitation of trade;

"(*b*) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition by making in the price, rental, or royalty, or other terms of any such sale, lease, license, or bailment any discrimination based upon whether the vendee, lessee, licensee, or bailee purchases, leases, licenses, or takes on bailment from him articles of a particular quantity or aggregate price;

"(*c*) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition either by refusing to supply to any other person requesting the same any article sold, leased, licensed, bailed, or otherwise dealt in or furnished by him, or by consenting to supply the same only upon terms or conditions in some respect less favorable than are accorded to any other person;

"(*d*) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition by supplying or offering to supply to any person or persons doing business in any particular territory articles sold, leased, licensed, bailed, or otherwise dealt in or furnished by him, upon terms or conditions in any respect more favorable than are accorded by him to his other customers;

"(*e*) As the vendor, lessor, licensor, or bailor of any article attempts to restrain or prevent competition by making any contract or arrangement under which he shall not sell, lease, or license any article in which he deals to certain persons or class of persons, or to those doing business within certain districts or territory;

"(*f*) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition by the use of any unfair or oppressive methods of competition; or

"B. Who has been sentenced, or who controls or is controlled by or is a member of or forms a part of any corporation or association which has been sentenced under the act to regulate commerce, approved February 4, 1887, or any amendment thereof, for any act or thing relating to any trade or business affected by such restraint done or occurring after this act goes into effect.

"The foregoing enumeration of acts, conduct, methods, and devices which it is herein declared shall each conclusively be deemed unreasonable does not include, and shall not be construed to exclude or as intended to exclude, any other acts, conduct, methods, or devices which are or may be unreasonable.

"The provisions of clause (*a*) of this section shall not apply to any case where the vendor, lessor, licensor, or bailor of any machine, tool, implement, or appliance protected by lawful patent rights vested in such vendor, lessor, licensor, or bailor requires the purchaser, lessee, licensee, or bailee to purchase or hire from him component or constituent parts of such machine, tool, implement, or appliance which such vendee, lessee, licensee, or bailee may thereafter acquire during the continuance of such patent right, nor shall any of the provisions of this section apply to the mere appointment of sole agents to sell, lease, license, bail, or furnish any article.

"SEC. 11. Whenever in any suit or proceeding, civil or criminal, brought under or involving the provisions of this act, it shall appear that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists which was or is in any respect or to any extent in restraint of trade or commerce among the several States or with foreign nations, there shall at once arise a rebuttable presumption that such restraint was or is unreasonable—

"(*a*) If in the business in connection with which said restraint of trade existed or exists, the person or persons engaged in such contract, combination, or conspiracy controlled or controls, or is a part of any corporation or association which controlled or controls at the time such restraint is alleged to have existed or to exist, more than 40 per cent in value of the total quantity sold in the United States, or more than 40 per cent in value of the total quantity sold in the part of district of the United States to which the business of such person, corporation, or association extends, of any article dealt in by such person, the trade in which is affected by such restraint.

"(*b*) If the vendor, lessor, licensor, or bailor of any article with a view to preventing competition fixes an unreasonably high price upon any article which enters into the manufacture of an article which is used in producing any other article sold, leased, licensed, bailed, or otherwise furnished by him, the trade in which is affected by such restraint.

"SEC. 12. Whenever in any suit or proceeding, civil or criminal, brought by or on behalf of the Government under the provisions of this act a final judgment or decree shall have been rendered to the effect that a defendant in violation of the provisions of this act has entered into a contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or has monopolized or attempted to monopolize or combined with any person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations, the existence of such illegal contract, combination, or conspiracy in restraint of trade or of such attempt or conspiracy to monopolize, shall to the full extent to which the facts and issues of fact or law were litigated and to the full extent to which such fact, judgment, or decree would constitute in any other proceeding an estoppel as between the Government and such person, constitute as against such defendant conclusive evidence of the same facts and be conclusive as to the same issues of law in favor of any other party in any other proceeding brought under or involving the provisions of this act.

"SEC. 13. In any civil proceeding begun under this act by the United States or the Attorney General or any district attorney thereof in which a judgment or decree interlocutory or final has been entered that the defendants, or any of them, have been guilty of conduct prohibited by section 1, section 2, or section 3 of this act, if it shall appear to the court by intervening petition of any other person or persons that such person or persons claims to have been injured by such conduct, such person or persons shall be admitted as a party to the suit to

establish such injury, if any, and the damages resulting therefrom, and such person or persons may have judgment and execution therefor or any other relief to the same extent as if an independent suit had been brought under section 7 of this act. In the course of such proceeding the court may grant orders of attachment or may appoint a receiver or may take such other proceeding conformable to the usual practices in equity as to insure the satisfaction of any claim so presented and the protection of the petitioners' rights. Nothing done under this section shall be permitted to delay the final disposition of said principal proceeding in all other respects, and nothing contained in this section shall be taken to abridge the right of any person or persons to bring a separate and independent suit as provided in section 7 of this act; but if any person proceeds both by intervening petition and by independent suit the court may order an election.

"SEC. 14. Such intervening petition or an original suit for the same cause under section 7 of this act shall not be barred by lapse of time, if begun within three years after final decree or judgment entered either in a civil or in a criminal proceeding brought by the United States or the Attorney General or any district attorney thereof establishing such violation by the defendant or defendants of section 1, section 2, or section 3: *Provided*, That the claim on which such intervening petition or original suit is founded was not already so barred at the time of the passage of this act."

The VICE PRESIDENT. Does the Senator desire a reference of the bill now?

Mr. LA FOLLETTE. I desire to speak on the bill, and then I shall ask that it be referred to the Committee on Interstate Commerce.

Mr. BRANDEGEE. Will the Senator from Wisconsin yield to me for a question?

Mr. LA FOLLETTE. Certainly.

Mr. BRANDEGEE. I desire to ask the Senator if the bill is already in print? The Secretary seemed to be reading from a printed copy.

Mr. LA FOLLETTE. I obtained from the Printing Office a few copies as a committee print.

Mr. BRANDEGEE. But there are none for distribution at present?

Mr. LA FOLLETTE. If the Senator will send a page to my committee room, I think he will be able to get one.

Mr. BRANDEGEE. I should like to get one in order to be able to follow the Senator as he makes his address.

Mr. LA FOLLETTE. Mr. President, the Sherman Act was the product of the best statesmanship of the time. The Senate at that day ranked with the Senate in the best days of its entire history. Senator Sherman, in whose brain was conceived the first idea of antitrust legislation, in an able and eloquent speech in the Senate on the subject, said:

Associated enterprise and capital are not satisfied with partnerships and corporations competing with each other, and have invented a form of combination commonly called "trusts," that seek to avoid competition by combining the controlling corporations, partnerships, and individuals engaged in the same business, and placing the power and property of the combination under the government of a few individuals, and often under the control of a single man called a trustee, a chairman, or president. The sole object of such a combination is to make competition impossible. It can control the market, raise or lower prices as will best promote its selfish interest, reduce prices in a particular locality and break down competition, and advance prices at will where competition does not exist. Its governing motive is to increase the profits of the parties composing it. The law of selfishness, uncontrolled by competition, compels it to disregard the interest of the consumer. It dictates terms to transportation companies. It commands the price of labor without fear of strikes, for in its field it allows no competitors. Such a combination is far more dangerous than any heretofore invented, and when it embraces the great body of all the corporations engaged in a particular industry in all the States of the Union, it tends to advance the price to the consumer of any article produced. It is a substantial monopoly, injurious to the public, and, by the rule of both the common law and the civil law, is null and void and the just subject of restraint by the courts; the forfeiture of corporate rights and privileges in some cases should be denounced as crime, and the individuals engaged in it should be punished as criminals. It is this kind of a combination we have to deal with now. If the concentrated powers of this combination are intrusted to a single man it is a kingly prerogative inconsistent with our form of government, and should be subject to the strong resistance of the State and national authorities. If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessaries of life. If we would not submit to an emperor, we should not submit to an autocrat of trade with power to prevent competition and to fix the price of any commodity. If the combination is confined to a State, the State should apply the remedy. If it is interstate and controls any production in many States, Congress must apply the remedy. If the combination affects interstate transportation or is aided in any way by a transportation company, it falls clearly within the power of Congress, and the remedy should be aimed at the corporations embraced in it, and should be swift and sure.

Mr. President, I make that quotation from the man who gave his name to the antitrust law in order to remind Senators today of the conditions which confronted the Senate at the time of its enactment. We have spent nearly the entire session on the tariff and so-called reciprocity; but after all there is no subject which is so important, which underlies so completely present-day ills which beset the country, as that to which Senator Sherman addressed the Senate on that March day 21 years ago.

It was considered and debated for some weeks. Then the whole subject was referred to the Judiciary Committee, which reported back a substitute that finally was enacted into law. Serving on that committee, Mr. President, were men whose names and services will always be honored and remembered. They have had equals in other periods of the Senate's history, but I think at no time was the average strength and power and professional standing of the Judiciary Committee higher than at the time of the consideration of this important legislation.

When that bill was reported from the Judiciary Committee a great debate ensued. It lasted for months. But, sir, so perfectly was the legislation framed that throughout the protracted debate it was impossible for those who assailed the bill to change it in any respect, and finally it passed the Senate without any modification whatever, exactly in the form in which it came from the Senate Judiciary Committee.

It went to the House of Representatives and was referred to the Judiciary Committee of that body. I was a Member of the House at that time and well remember that Representative Culberson, the father of the senior Senator from Texas [Mr. CULBERSON], one of the ablest lawyers who ever served in the House of Representatives, was accorded the honor of reporting that bill to the House of Representatives.

It was reported without amendment and debated at considerable length. I recall that Representative William McKinley, as chairman of the Committee on Rules, reported to the House the rule under which that bill was given right of way for immediate consideration. The strongest lawyers in that body took part in the debate.

Finally, Mr. President, it passed and went to President Harrison for consideration. He approved it on the 2d of July, 1890. The bill as approved by the President is exactly in the form in which it was reported from the Judiciary Committee of the Senate.

Now, Mr. President, without detaining the Senate to read them, I wish to incorporate in my remarks some extracts from the debates of that time, giving the estimate of the ablest lawyers upon the importance and character of the Sherman law as enacted.

The PRESIDING OFFICER (Mr. MARTINE of New Jersey in the chair). Leave will be granted if there be no objection. The Chair hears none.

The matter referred to is as follows:

In the great debate that followed, the principle embodied in the proposed bill received the support of many of the ablest Senators of that time. I quote briefly from Senator Turpie, of Indiana, who said:

The purpose of the bill of the Senator from Ohio is to nullify agreements and obligations of the trusts—of these fraudulent combinations. I favor it. There is another purpose—to give to parties injured civil remedy in damages for injury inflicted. I am in favor of that. Those are the two principal measures embraced in that bill. I am willing to go much further, and I think Senators generally will, also. There can be no objection to the proposition to nullify trust contracts. There can be no objection to giving a civil remedy for those injured thereby, and there ought to be still less objection to punishing penally those who are guilty of these fraudulent combinations.

The moment we denounce these trusts penally, the moment we declare these fraudulent trusts, combinations, party conspiracies, to be felonies or misdemeanors, that moment the courts are bound to carry out the intention of the purpose of the legislation, and then to favor that purpose and intention that the will of the people may prevail and not perish. I have no doubt that when this law comes into practical operation it will receive a construction and definition very useful to us. It will be aided by courts and juries. It will be aided by advocates on both sides in stating different views of construction, and, above all, it will be supported and upheld by the public opinion expressed in a denunciation of those evils which this kind of legislation would avert and avoid.

Senator Edmunds of Vermont, chairman of the Judiciary Committee, made an extended argument, from which I quote:

I am in favor of the scheme, in its fundamental desire and motive—most heartily in favor of it—directed to the breaking up of great monopolies which get hold of the whole or some parts of particular business in the country, and are enabled therefore to command everybody, laborer, consumer, producer, and everybody else, as the Sugar Trust and the Oil Trust. I am in favor, most earnestly in favor, of doing anything that the Constitution of the United States has given Congress power to do, to repress, break up, and destroy forever monopolies of that character; because in the long run, however seductive they may appear in lowering prices to the consumer for the time being, all human experience and all human philosophy has proved that they are destructive of the public welfare and come to be tyrannies, grinding tyrannies.

Mr. Ezra B. Taylor of Ohio, chairman of the Judiciary Committee, supported the bill in a strong speech, from which the following is quoted:

I am opposed to trusts, foreign or domestic; they toil not, neither do they spin, and yet they accumulate their numberless millions from the toil of others. They lay burdens, but bear none. The Beef Trust fixes arbitrarily the price of cattle, from which there is no appeal, for there is no other market. The farmers get from one-third to one-half the farm value of their cattle, and yet beef is as costly as ever. Even if the conscience of the retailer is touched, and he reduces his price, the trust steps on him and refuses to sell to him, but undersells him until he is ruined. This monster robs the farmer on the one hand, and the consumer on the other. This bill proposed to destroy such

monopolies, such destructive tyrants, and goes as far in that direction as Congress has power to go under the Constitution. It describes and condemns the wrong, fixes the penalty, both civil and criminal, and gives the United States courts new jurisdiction. It is clearly drawn, is practical, and will prove efficacious and valuable.

Mr. Stuart of Vermont, closing the debate in the House, said:

The provisions of this trust bill are just as broad, sweeping, and explicit as the English language can make them to express the power of Congress on this subject under the Constitution of the United States.

Mr. LA FOLLETTE. But summing it all up, Mr. President, 21 years ago Congress enacted a law that clothed the Department of Justice with the largest power that could be conferred under the Constitution to deal with trusts and combinations organized in restraint of trade.

It placed in the hands of the executive department of this great Government the strongest and most perfect weapon which the ingenuity of man could forge for the protection of the people of this country against the power and sordid greed of monopoly. Sir, I believe that it will be the impartial verdict of history that an honest and faithful effort to enforce the antitrust law would have freed the trade and commerce of our country from the blighting curse of a system which has been promoted to destroy equal opportunity in every department of business and concentrate in the hands of the criminal violators of the law wealth and power so great as to control the industrial and commercial life of the American people and finally dominate with almost unlimited power every department of government.

At that time there were but few trusts and combinations in existence. Anthracite coal was the oldest and strongest of all, and is to-day the strongest of all except that organization which has been builded up in recent years to control the credits and finances of the country. At that time the Standard Oil, Beef, and Sugar Trusts were in existence, and there were others of less importance. But you could number on the fingers of two hands the great organizations powerful enough to suppress and strangle competition and control prices at that time. It is to the everlasting credit, sir, of the statesmanship of that day that it foresaw and forecast the evils that would flow from trust control if it were not checked and suppressed by all the power which the Constitution of this country authorized Congress to confer upon the administrative department of Government.

So the administration of President Harrison on the 2d of July, 1890, was clothed with the power to destroy at the very outset organizations designed to impose upon the people of this country industrial and commercial servitude.

How was the law enforced by the Harrison administration? During the almost three years of President Harrison's administration under this act there were seven prosecutions begun by the Government. Four of those prosecutions utterly failed. One of them, an unimportant one, was successful in that administration largely because the violation of the act had been so flagrant that no other result was possible. Another one, the first case against organized labor, was won in the succeeding administration, and the fourth case was also lost in the succeeding administration.

An examination of the reports of the Attorney General of the Harrison administration makes it pretty clear that he did not take early notice nor have a full conception of the conditions or of the importance of vigorous prosecution of those who were then violating the law which had been passed by Congress.

The Attorney General of the Harrison administration, had he taken any note of the great debate which occurred in this body and in the House of Representatives, must have been impressed with the responsibility of his office and his duty to enforce the law.

Mr. President, the ills that have fallen upon the people of this country and the greatest of all problems which now confront us, have grown in magnitude until it is a serious question whether these combinations are not more powerful than government. That great problem would not have been committed, with all its complications, to the people of this day and generation if the Attorneys General, the Department of Justice, and the United States district attorneys of the country had efficiently administered the law enacted 21 years ago.

I pause in passing to say that the fault must be borne in part by the Senate of the United States; for, let it be remembered, sir, that the influence of Senators who have power to confirm or reject is exerted upon every President in the appointment of Attorneys General, Federal judges, and United States district attorneys.

President Harrison was succeeded by the Cleveland administration. During that administration 10 cases were prosecuted by the Government under the Sherman Act. Three of those cases came over from the preceding administration, two of which were against trusts, and one against organized labor. Four of the seven cases instituted under the Cleveland administration were against organized labor; and three were against trusts and combinations. The four cases against organized labor grew out of the railway strikes of 1894, and were prosecuted vigorously and successfully by Attorney General Olney. Only one failed, and that case would not have failed excepting that the jury disagreed. The case against organized labor that came over from the Harrison administration was successful. Of the five cases against trusts and combinations four failed in the lower courts, but two of them were won during McKinley's administration. One was successful in Cleveland's administration, and that was the Trans-Missouri case which was ably presented by Attorney General Harmon and has become important in the history of the Sherman Act and its administration by the courts.

It succeeded in the United States Supreme Court by the vote of one judge, five members of that court sustaining the Government's contention and four members supporting the contention made by the railroads. The decision of the court in the Trans-Missouri case was reversed in the recent decision of the Standard Oil case.

I wish briefly to call attention to the reports of the Attorneys General under the Cleveland, as I have to those under the Harrison, administration. There were two Attorneys General under the Cleveland administration. From March, 1893, to March, 1897, Richard Olney, of Massachusetts, was Attorney General. He was succeeded by Judson Harmon, who remained until the close of the Cleveland régime.

I have spoken of the Harrison administration and the attitude of the Attorney General toward this legislation just as fairly and as impartially as the record justifies. Now, I contend that no one can examine the reports of Attorney General Olney under the Cleveland administration without being convinced that his mental attitude indicated an entire lack of sympathy with, if not hostility to, the law and the objects sought to be attained in its enactment. Note this paragraph from his report in 1893:

There has been and probably still is a widespread impression that the aim and effect of this statute are to prohibit and prevent those aggregations of capital which are so common at the present day, and which are sometimes on so large a scale as to control practically all the branches of an extensive industry. It would not be useful, even if it were possible, to ascertain the precise purposes of the framers of the statute. It is sufficient to point out what small basis there is for the popular impression referred to.

In this day, Mr. President, when all production and every market place is under the control of combinations, that sounds like administrative nullification. Here was a law enacted by the wisest statesmen of their day, who had been chosen to make the laws for this great Nation. Looking out into the future they saw on the horizon this evil, not large then, but they saw its grave dangers to future generations. And they clothed the administrative branch of our Government with power ample to meet the problem then, if not now.

Mr. Olney retired from the office of Attorney General some time after the 4th of March, 1895, and Judson Harmon succeeded him in that office.

On the 7th of January, 1896, the House of Representatives, apparently dissatisfied with the administration of the law and alarmed at the rapid growth of trust control in business, passed a resolution calling on the Attorney General to report what steps, if any, had been taken to enforce the Sherman law.

Mr. OVERMAN. Will the Senator please give the date?

Mr. LA FOLLETTE. January 7, 1896, that resolution was passed by the House of Representatives.

Mr. OVERMAN. Will the Senator give me the date when Governor Harmon was appointed Attorney General?

Mr. LA FOLLETTE. Well, I can not give the Senator the exact date, but I can give it to him substantially. Olney's term as Attorney General began on the 4th of March, 1893. That was the beginning of the second term of the Cleveland administration.

Mr. OVERMAN. The first Cleveland administration began in 1885.

Mr. LA FOLLETTE. Olney was transferred from the Attorney General's office to the State Department in the spring—I can not give you the exact date, but in the spring of 1895. I am sure that he filled out two full years as Attorney General; and when he left the Attorney General's office Harmon succeeded him. Harmon had been Attorney General from the spring of 1895, and was Attorney General at the time of the passage of this resolution calling for a report as to what had been done toward the enforcement of the Sherman Act.

Mr. LEA. Mr. President, if the Senator from Wisconsin will yield for a moment——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from Tennessee?

Mr. LA FOLLETTE. I do.

Mr. LEA. I will state that Harmon was appointed Attorney General on June 8, 1895.

Mr. LA FOLLETTE. On June 8, 1895. I thank the Senator from Tennessee for giving me the exact date. I knew it was some time during the early part of the third year of the second Cleveland administration.

The House of Representatives asked for something more than information as to what had been done up to that time. They wanted to know what, in the view of the Attorney General, was necessary in the way of additional legislation to eradicate the evil which menaced the market places and commercial freedom everywhere. The Attorney General, in response to that resolution, answered in this language:

Two actions are now pending based partly or wholly on alleged violations of what is known as the Sherman Act. They both relate to agreements among interstate carriers.

That sums up what that administration was doing at that time toward enforcing the Sherman law. In response to the inquiry for his opinion regarding additional legislation, Attorney General Harmon said:

Congress may make it unlawful to ship from one State to another in carrying out or attempting to carry out the designs of such organizations articles produced, owned, or controlled by them or any of their members or agents. * * * The law should contain a provision like that of the interstate-commerce law to prevent the refusal of witnesses to answer on the ground of self-incrimination. The purchase or combination of any firm or enterprises in different States which were competitive before such combination should be prima facie evidence of an attempt to monopolize. * * * If the Department of Justice is to conduct investigations of alleged violations of the present law, or of the law as it may be amended, it must be provided with a liberal appropriation and a force properly selected and organized. * * * But I respectfully submit that the general policy which has been hitherto pursued of confining this department very closely to court work is a wise one, and that the duty of detecting offenses and furnishing evidence thereof should be committed to some other department or bureau.

The last suggestion, Mr. President, I venture to say in the light of our time, is the only suggestion made by Attorney General Harmon that was significant or important, but is in contradiction with the express terms of the law which makes it "the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations."

Mr. POMERENE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from Ohio?

Mr. LA FOLLETTE. I do.

Mr. POMERENE. In the interest of the history of this proposition, may I offer a suggestion or two at this point?

Mr. LA FOLLETTE. Certainly; I yield with pleasure.

Mr. POMERENE. Mr. President, at the time Attorney General Harmon assumed his duties as Attorney General, I think the cases to which the Senator has referred were pending.

The Senator from Wisconsin has referred to the trans-Missouri case. At the time that Judson Harmon became Attorney General this case was pending in the United States Supreme Court. It had been argued by the Republican Attorney General, Mr. Miller, in the United States circuit court, and the Government was defeated. An appeal was taken to the United States Circuit Court of Appeals, and the Government was again defeated, one of the judges dissenting.

The case was then taken to the Supreme Court of the United States, and nothing was done with the case until Judson Harmon became Attorney General. He took up that case; he briefed it and he argued it. The case was not decided until about March 21 or 27—I have forgotten the exact date—after his term had expired. Up to this time the opinions by the circuit courts were adverse to the Government.

There was one decision by the United States Supreme Court, which was in the sugar case. In that case the Supreme Court held that the statute had not been violated by reason of the fact that the main purpose of the combination was one for manufacturing and not one that involved interstate commerce; in other words, that interstate commerce was only an incident.

After Judson Harmon had taken hold of this case vigorously and his position for the first time was sustained by the Supreme Court by a divided bench, as the Senator has suggested, he directed two other cases to be begun, one against the Joint Traffic Association of New York, and that later was argued by his successors in office, and was later decided in favor of the Government. The other case was the Addyston Pipe Co. case, which was decided later.

Mr. LA FOLLETTE. Permit me to say to the Senator that I am covering the entire ground and reviewing the cases, and am giving as impartially as I can credit where it belongs. I simply did not want the Senator to anticipate me and compel me to go over the same ground again. That was all.

Mr. POMERENE. I am sure I have no desire to interfere, except that I understood the Senator was passing on to the succeeding administration, and for that reason I wanted these facts to appear in the RECORD.

Mr. LA FOLLETTE. I have covered the work of the Cleveland administration and that of Attorney General Harmon, and I think I have been entirely fair. It is true that he argued the Trans-Missouri case, and that it was decided for the Government. He argued the case. I would not in any way disparage his work. The case which he argued—the Trans-Missouri case—a very important one, was won in the Supreme Court when it had been lost in the court below.

The case in the Supreme Court was won by the Government by a majority of one on a vote of the court. The cases below had been lost by the Government. In the Court of Appeals the Government had one of the judges for its contention and two against it. Under the McKinley administration there were six prosecutions, of which three were inherited from the previous administration. The Government failed in two and was successful in four.

I am taking more time than I intended with this part of the discussion, and I must hasten. I shall ask leave of the Senate to incorporate in the RECORD in connection with my remarks everything that was said by the Attorneys General on the Sherman Act under all the administrations, so that the RECORD will show, in so far as their reports give it, just what their attitude was toward this act.

The PRESIDING OFFICER. Without objection, permission is granted.

The matter referred to follows as appendix.

Mr. LA FOLLETTE. Under the Harrison administration, the Cleveland administration, and the McKinley administration there were 16 cases prosecuted. Under the Roosevelt administration there were 44.

Without taking the time of the Senate now to go into the details of that administration, I shall ask leave to incorporate in what I say the discussion of the Sherman Act by the Attorneys General of that administration and the results of their prosecutions. A number of the cases that were begun under the Roosevelt administration have come over into the succeeding administration. But many more cases were instituted against these violators of law under the Roosevelt administration than under the administrations of his three predecessors in office, covering a period of 12 years. The time, Mr. President, when prosecutions were vital to the people of this country was at the inception of these great organizations, before they had grown to have such power everywhere—in municipal government, in State government, and indeed in all the departments of the National Government.

Mr. KENYON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from Iowa?

Mr. LA FOLLETTE. Yes.

Mr. KENYON. I should like to inquire of the Senator from Wisconsin if he gave any figures as to the McKinley administration.

Mr. LA FOLLETTE. I did.

Mr. KENYON. Of civil actions or of criminal prosecutions?

Mr. LA FOLLETTE. Actions by the Government.

Mr. KENYON. Not differentiating as to whether they were civil or criminal?

Mr. LA FOLLETTE. No; actions by the Government.

Mr. KENYON. I think the Senator will find there were no criminal actions in the McKinley administration.

Mr. LA FOLLETTE. Perhaps that is true. But there were actions instituted by the Government, just as I have given them.

Mr. KENYON. Your remarks include both civil and criminal actions?

Mr. LA FOLLETTE. Yes. I am very certain of my data, I will say to the Senator, because I have gone over the record with very great care.

Mr. President, the Sherman Act has been sustained by the Supreme Court again and again just exactly as it was written in the beginning, until the decisions were rendered in the Standard Oil and Tobacco cases. In the trans-Mississippi case, upon which the court was divided 5 to 4, and in two other cases following, it was contended by the defendants that the act should be construed just as though the words "unreasonable or undue" had been written into the statute before the words "restraint of trade"; that is, their contention was that the court was bound to construe the act as though Congress had intended it to read:

Every contract, combination in the form of trust or otherwise, or conspiracy, in unreasonable or undue restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

That was the contention of the attorneys for the railroads in the trans-Missouri case. That was the issue exactly. That was the contenton of Mr. Justice White in his dissenting opinion. And Mr. Justice Peckham, who wrote the majority opinion, contended that the court ought not to "read into the act, by way of judicial legislation, an exception that is not placed there by the lawmaking branch of the Government."

Just note this brief extract from the opinion of Mr. Justice Peckham in that case. He says:

> The arguments which have been addressed to us against the inclusion of all contracts in restraint of trade, as provided for by the language of the act, have been based upon the alleged presumption that Congress, notwithstanding the language of the act could not have intended to embrace all contracts, but only such contracts as were in unreasonable restraint of trade. Under these circumstances we are, therefore, asked to hold that the act of Congress excepts contracts which are not in unreasonable restraint of trade and which only keep rates up to a reasonable price, notwithstanding the language of the act makes no such exception. In other words, we are asked to read into the act, by way of judicial legislation, an exception that is not placed there by the lawmaking branch of the Government, and this is to be done upon the theory that the impolicy of such legislation is so clear that it can not be supposed Congress intended the natural import of the language it used.

Now, mark what the court says:

> This we can not and ought not to do. If the act ought to read as contended by the defendants, Congress is the body to amend it, and not this court by a process of judicial legislation wholly unjustifiable.

Quoting a little further from the opinion, and only a few lines:

> When, therefore, the body of an act pronounces as illegal every contract or combination in restraint of trade or commerce among the several States, etc., the plain and ordinary meaning of such language is not limited to that kind of contract alone which is unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by Congress.

But, Mr. President, the Supreme Court, in the Standard Oil case, did write into the act that which Mr. Justice Peckham and the other members of the court constituting a majority decided that the court had no right to place there. I believe that the decision of the Supreme Court in the Standard Oil case incorporating into the Sherman act the word "unreasonable" came to the profession as a distinct shock.

I quote the language of a Federal judge in an article which recently appeared in the North American Review, commenting upon this decision:

> It would be mere hypocrisy to say that the court has not turned upon itself. What the court fourteen years ago said was not in the act the court now says is in the act. Meantime, not a letter of the act has been changed.

When the Supreme Court has spoken we must bow our heads and address ourselves to the law as we find it to-day; and so I say that we must read this law now as the Supreme Court has written it in the decision of the Standard Oil and Tobacco Co. cases. They have amended the Sherman Act. It matters not that Congress for the last 10 or 15 years has refused to write into the act these words. The court has construed the law as meaning "unreasonable" or "undue" restraint of trade. It is clearly a usurpation of power upon the part of the Supreme Court. As to the propriety of the amendment, there may be room, perhaps, for argument; but there is no question as to what branch of this Government should have made the amendment if it was to be made at all.

Mr. OWEN. Mr. President, can the Senator from Wisconsin point out the fact that Congress refused positively to make this amendment?

Mr. LA FOLLETTE. I may not have stated in so many words that that was the fact, but I understand it to be the history of the legislation.

Mr. OWEN. That is the fact. Congress refused most emphatically.

Mr. LA FOLLETTE. I think such a bill was introduced here in the United States Senate and was reported unfavorably from the Judiciary Committee.

Mr. OVERMAN. By the Senator from Minnesota [Mr. NELSON].

Mr. LA FOLLETTE. I think the Senator is correct, and that the report was submitted by the Senator from Minnesota [Mr. NELSON], on behalf of the Committee on the Judiciary, a year or 18 months ago.

Mr. OWEN. It was a report on that very point.

Mr. LA FOLLETTE. I remember it very well. It appears that when these great interests found that the representatives of the people, who under the Constitution are clothed with the lawmaking power, would not amend the law, the Supreme Court yielded finally to the arguments of the counsel for Standard Oil and injected into the law by judicial construction what the lawmaking branch of our Government had refused to incorporate in it by legislative enactment.

Mr. OWEN. I would suggest to the Senator that they yielded after the new members had been put on the court.

Mr. LA FOLLETTE. Of course, if the court had been composed of the same judges as when the trans-Missouri and the other two cases which followed it were decided the Standard Oil decision would have maintained the law in the form in which Congress enacted it.

Mr. OWEN. All the new members fell on that side of the line by some strange accident.

Mr. LA FOLLETTE. I believe that is historically true.

Mr. CLAPP. The accident?

Mr. LA FOLLETTE. No; the fact.

Mr. OWEN. I omitted the accidental portion.

Mr. BACON. I think it is a rather unfortunate suggestion, in view of the fact that the judgment was rendered by all except one member only. Why should the two members be selected when but one decided the other way?

Mr. OWEN. The reference does not relate to two members only. It goes back to the Missouri case and the judges who were put on since that time.

Mr. BACON. If it had been a close question, as in the income-taxe case, where it was decided by one majority, that might be a pertinent suggestion, but it was not a case where the court was divided that way.

Mr. OWEN. The more thoroughly it is examined the more pertinent the suggestion will appear.

Mr. LA FOLLETTE. Mr. President, I did not intend to discuss that phase of the decision. History will take care of that matter and do exact justice to the important events and the men who have part in them to-day. These great problems will be settled, and rightly settled, in good time.

I do not expect that there will be any legislative action at this session, but I am offering my bill now and addressing the Senate upon it in the hope of awakening interest and public discussion of its provisions in the interval between adjournment and the meeting of Congress in December. This is a subject which merits the most serious consideration of the American people, and I hope that the bill which I am offering here to-day may engage the attention of lawyers and of business men. I earnestly believe, Mr. President, that it is a step forward in the solution of this great question.

Mr. OVERMAN. I should like to ask the Senator as he goes along whether there could be such a thing as a reasonable restraint of trade?

Mr. LA FOLLETTE. Now, that the action of the Supreme Court must be accepted, I think the only way we can meet the situation is by writing into the law a rule of procedure for courts and a statutory guide for the business men of this country. I will come to that in just a moment, if the Senator will pardon me.

As the law now stands, as amended, the Supreme Court may exercise a power over the business interests of this country more despotic than any monarch of the civilized world over his subjects. To one corporation it may give its approval that the combinations which it has entered into in restraint of trade are reasonable. To another corporation it may say that the combinations which it has entered into are unreasonable; and in the infinite variety that attends upon all human conduct, the blending and shading of one set of circumstances or conditions into another, there will be no guide for the business world and no rule of law for the courts, no clearly defined line within which anyone may feel confident that the issues have been determined.

The President expressed in his message to Congress upon this subject the very great danger and confusion which would result from incorporating into the Sherman Act the words "unreasonable or undue." I want to remind Senators of the language of President Taft in his message of January 7, 1910, in discussing this very question as to whether these words should be incorporated in the act even by legislation. He regarded it as dangerous to legislate them into the act. He said:

> Many people conducting great businesses have cherished a hope and belief that in some way or other a line may be drawn between "good trusts" and "bad trusts," and that it is possible by amendment to the antitrust law to make a distinction under which good combinations may be permitted to organize, suppress competition, control prices, and do it all legally if only they do not abuse the power by taking too great profit out of the business. They point with force to certain notorious trusts as having grown into power through criminal methods by the use of illegal rebates and plain cheating, and by various acts utterly violative of business honesty and morality, and urge the establishment of some legal line of separation by which "criminal trusts" of this kind can be punished, and they, on the other hand, be permitted under the law to carry on their business. Now the public, and especially the business public, ought to rid themselves of the idea that such a distinction is practicable or can be introduced into the statute. Certainly under the present antitrust law no such distinction exists. It has been proposed, however, that the word "reasonable" should be made a part of the statute, and that then it should be left to the court to

say what is a reasonable restraint of trade, what is a reasonable suppression of competition, what is a reasonable monopoly. I venture to think that this is to put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to good judgment. It is to thrust upon the courts a burden that they have no precedents to enable them to carry, and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster.

That was the view of the President January 7, 1910, on the very modification of the Sherman Act which the Supreme Court has worked into it by construction. After opposing the amendment by Congress for the very good reason stated by him, he now approves of the same amendment when made by the Supreme Court. In his speech at New Haven on June 21, 1911, speaking of the Standard Oil and Tobacco decisions, he said:

I believe those decisions have done and will continue to do great good to all the business of the country, and that they have laid down a line of distinction which it is not difficult for honest and intelligent business men to follow.

I do not know whether Senators get the full import of those words or not. The President gives no reason for the complete reversal of his view upon that question, but that is not important. I have quoted him only because in his message to Congress he correctly set forth the arbitrary and dangerous power which would be conferred upon the Supreme Court by the amendment, and in his New Haven speech he correctly set forth the conditions in which the business interests of the country find themselves.

He says that the law, as amended by the court, has made it largely a "question of fact and a question of conscience with the business community" as to the standard of their future action. That is, they are left without any rule of law to guide them. The business community is to be guided by "conscience" and not by law.

Mr. President, this is nothing more or less than the rule of conduct advocated by the philosophic anarchist, that we do not need any law or any statutory rule as a guide for conduct, but that conscience shall be the supreme judge for each individual. The bill that I have introduced furnishes a statutory guide to the business community and a rule of law to govern the courts in view of this decision which has changed the Sherman law.

Whatever may be said for or against the proposition, that every restraint of trade should be unlawful, it is manifestly for the legislative branch of the Government to declare what methods and practices shall be forbidden. This is purely a matter of legislation and the rule of conduct should be laid down by Congress and not left to the power of the Supreme Court to give or withhold its approval to a corporation according to its arbitrary will.

The bill which I have presented to the Senate to-day "to further protect trade and commerce" against unlawful restraints and monopolies is strictly a supplement and not an amendment to the Sherman antitrust law. It does not propose any alteration of the substantive provisions of the existing law as recently interpreted by the Supreme Court of the United States in the Standard Oil and Tobacco cases. It does not change a single word of the eight sections of which the Sherman antitrust law is now composed. It does not modify the rule of reasonableness enunciated by the court, but it makes that rule more certain and easier of application. It provides also effective means for securing compensation or other relief for those who have been injured by combinations or conspiracies which have been judicially declared illegal, and it otherwise greatly facilitates the enforcement of the law. In other words, this bill seeks to perfect the Sherman antitrust law by improving the machinery for the enforcement of its substantive provisions.

These perfecting provisions are included in six additional sections which, if enacted, will become sections 9 to 14 of the perfected Sherman antitrust law.

These perfecting provisions are of three classes:

The first deals with the burden of proof.

The second simplifies the application of the so-called rule of reason.

The third enables those injured by violations of the law to secure compensation or other relief.

THE BURDEN OF PROOF.

At present, when either the Government or an individual seeks to enforce the Sherman antitrust law, the burden of proof is upon the prosecutor or the plaintiff to establish not only the existence of a combination or conspiracy in restraint of trade, but also that the restraint is unreasonable. In criminal proceedings proof of these contentions must be made beyond reasonable doubt. This existing rule of procedure gives undue protection to combinations and conspiracies in restraint of trade. If such a combination or conspiracy is established, the burden of showing that it is not harmful, or, in other words, that it is reasonable, ought to be upon him who makes that contention. This bill therefore provides that whenever in any proceeding it shall appear that trade has been restrained by a combination or conspiracy the burden to show that it is reasonable restraint shall be upon the party who asserts it. Section 9, while recognizing absolutely the "rule of reason" enunciated by the court, thus declares a rule of common sense which is to prevail in applying the rule of reason.

APPLYING THE RULE OF REASON.

Certain practices commonly found in connection with combinations and conspiracies in restraint of trade have been recognized as necessarily harmful and as therefore making the restraint unreasonable wherever they are pursued. There are practices or certain conditions which do not necessarily render combinations or conspiracies in restraint of trade mischievous or unreasonable, but ordinarily do so. Section 10 enumerates certain of these practices which it has been demonstrated always render restraints unreasonable. Section 11 covers certain conditions or practices which presumptively, but not necessarily, render a combination or conspiracy in restraint of trade unreasonable. These sections, which practically codify what has been or what undoubtedly would be held to be the common law, are, of course, applicable only when the conspiracy in restraint of trade has already been proven.

Section 10 provides that all combinations or conspiracies in restraint of trade attended by unfair or oppressive methods are declared unreasonable. No one can doubt that such is now the common law. But section 10 does more than declare this rule. It undertakes to specify some of the usual practices which are unfair or oppressive. The first practice enumerated as making restraint unreasonable is that which has been widely used by certain trusts of suppressing competition by practically compelling customers to deal exclusively with the trust if they desire to take from the trust some essential article of which it has a monopoly. For instance, in the manufacture of a pair of shoes many different kinds of machines are used, and in every large shoe factory there are many machines of each kind. The United Shoe Machinery Co. has a practical monopoly of the essential shoe machines by leasing (instead of selling) its important machines and requiring its customers to use these essential machines only in connection with other machines controlled by the United Shoe Co. In this indirect way competing machines are excluded from the factory, even though superior and offered at a much lower price.

This practice of preventing the use of practically every competitive article is effected in a number of ways. Sometimes the use of the competitor's article is prohibited in terms. Sometimes the customer is left in terms free to use any competing machine, but the producer silently refuses to furnish the needed article to the customers if the latter takes any article dealt in by the competitor. Sometimes the customer is expressly given the freedom of purchasing from a competitor, but the discrimination in price or terms where that freedom is exercised is such as to make it impossible for the customer to deal partly with the trust and partly with the competitor.

Another practice enumerated as making unreasonable any combination or conspiracy in restraint of trade in connection with which it is pursued is the common arrangement by which manufacturers agree with one another to divide up territory or trade, so as to give to each monopoly of certain customers.

Another incident enumerated as making a combination or conspiracy in restraint of trade unreasonable deals with the subject of rebates or some other unjust discrimination from railroads. Section 10 declares that whenever it appears that trade has been restrained by a concern which is hereafter sentenced for obtaining an illegal rebate or discrimination the restraint exercised shall be deemed unreasonable.

Section 10, by enumerating these various mischievous practices, not only simplifies the task of applying the rule of reason in connection with the Sherman Antitrust Act, but it also furnishes definite instruction to the citizen and business man in advance as to what should be avoided. The practices enumerated, however, are merely instances of practices making restraint unreasonable, it being expressly provided that they do not exclude other practices, and undoubtedly from time to time additional practices, as developed, will be added by legislation to those enumerated in section 10.

I have no question, Mr. President, but that the adoption of the bill which I have proposed to-day would make it necessary from time to time to extend the definition which is laid down in the provisions of this proposed law, but I do think that a critical study of the bill as proposed will be found to cover practically all of the practices by which trusts and combinations unreasonably restrain trade at the present time.

Section 11, as stated, deals with certain other conditions and with practices which are apt to render combinations or conspiracies in restraint of trade unreasonable, but which do not necessarily have that effect. The section therefore makes the existence of such conditions or practices a rebuttable presumption of reasonableness. Thus, if a conspiracy or restraint of trade is established, the fact that those engaged in it control at least 40 per cent of the business in the market involved renders the restraint presumptively unreasonable; in other words, it is declared a legal probability that a control of 40 per cent of the product of any article in any market obtained through or as an incident of a combination or conspiracy in restraint of trade is unreasonable. But though that probability is given legal recognition, an opportunity is offered of establishing, if for some reason in this instance, the contrary is true.

REMEDY FOR THE INJURED.

The inadequacy of the present law is manifested most clearly in its failure either to afford compensation or to administer punishment, even though the violations of the act have been judicially established. The Standard Oil and Tobacco cases afford a signal illustration of this defect. Each of these industrial combinations has been the means by which hundreds of millions of dollars have been extorted from the public, and hundreds, probably thousands, of independent business concerns have been ruthlessly crushed. Not one of the consumers, not one of the producers or dealers, who fell a victim before the illegal practices of these trusts will be compensated as a result of the recent decisions. All the fruits of the illegal practices are left to the enjoyment of the rapacious officers or stockholders of these companies. No reparation is made for the past wrongs so profitably pursued. Obviously this is a complete failure of justice. Assuming that the decisions will be completely successful in preventing a recurrence of these wrongs, we are nevertheless confronted with the rank social injustice that there should be no remedy and no punishment for the past. As the wrongfulness of their acts and the illegality of the conspiracies have been judicially established, it ought to follow, under a proper judicial system, as a matter of course, that those who were injured thereby should receive compensation, and that so far as possible the wrongdoer should be obliged to disgorge profits wrongfully obtained.

Mr. President, I pause not to make a point of the absence of a quorum here, because I do not care to delay the Senate for a call of the roll, but I wish to note the fact that I am addressing many vacant seats. However, I shall conclude in a few moments, and then the absent Senators can return to the Chamber.

I am satisfied that what I am saying to-day is of interest to the people of this country, who are paying two and three prices for the necessaries of life. They pretty well understand that the increased cost of living arises from the fact that the market wherein we sell, as the market where we must buy, is controlled by the same people, and that it is in their power, without regard to production cost, to fix the price level as they please.

Mr. President, a generation ago a million free people shouldered their muskets and marched away under the flag to find death on the hillside and in the valley, in the prisons and in the whirlwind of the charge. For what? To free men physically—to strike off the shackles. When they come to understand—and they pretty well comprehend that now—that it is in the power of a very few men in this country to say what shall be paid for everything produced by their toil and what shall be paid for everything they must buy in order to live—when that works itself completely into the minds of the people of this country they will realize that that means servitude to those men who control markets—bondage as effectual as though they were owned as chattels. When that is once understood by 90,000,000 free men, they will liberate this market; you will hear not the tread of armed men going out to shoot to death oppression, but 10,000,000 free men, with their ballots in their hands, will bring government back to the people. If it is necessary to establish the initiative, the referendum, and the recall to make this Government truly representative, the people of this country have that power, and, as sure as God reigns, they will exercise it.

Within 24 hours in this Chamber, when the admission of Arizona was under discussion, Senators complained because the people of Arizona demanded these instruments of democracy. Why, Mr. President, the people of every State know that Government is not representative; they know it was established as a representative Government; that meant that the men chosen for service in the United States Senate, in the House of Representatives, and the various legislative assemblies of the States should represent faithfully the will of the people; they know that for three generations after it was established this Government was truly representative; they know that then corruption began to eat into its life.

And I believe they are beginning to understand, Mr. President, that although 21 years ago there was patriotism enough in the Congress of the United States to write the Sherman law on the statute books, that it has not been honestly and faithfully administered. They understand all about the decisions of the court; they understand all about the betrayal of their legislative representatives; they understand, sir, how administrative officers have, at the beck and the nod of these powerful interests, suppressed prosecutions and overlooked violations of the law.

Need anyone marvel that there is a great uprising throughout this country for a restoration of government to the people? It is their Government, and they do not purpose to see it destroyed. They demand the initiative, the referendum, and the recall in order to insure the perpetuity of representative government.

The men who made this Government and their children constitute the sovereign power of this country. They are greater than Congresses, greater than courts or statutes or constitutions. They made them, and they can unmake and make again. All they ask is to be faithfully represented. When the representative in the United States Senate, in the House of Representatives, in the State senate and assembly, in the common council of municipalities are faithful to the public interests the initiative, the referendum, and the recall will never be invoked.

Talk about the hasty judgment of the public! If there is a body of people in all this universe that is conservative, it is the great mass of the American people. It takes a long time, Mr. President, to prevail upon a majority of 90,000,000 people to think alike upon any proposition. It must be a sound proposition; it must be well grounded; it must appeal to their intelligence, to their conscience, or they will not move together as one man in its support. There need be no fear of ill-considered action. Put into their hands the power that is theirs and do it without unreasonable delay. Let the discussion be full and fair. They will be better ready to exercise it when it comes, and it will come, Mr. President. Organized wealth and power may delay, but it can not defeat it. This is a people's government—in theory and principle—and there is lodged in their hands the power to make it so in fact.

Mr. President, I apologize for this digression, occasioned by the lack of interest betrayed by the representatives of the people in this subject, which is so vitally important to those whom they represent.

I return to the discussion of the bill.

The present failure of justice in this respect is due mainly to two causes:

First. While every person injured by the Standard Oil or the Tobacco conspiracies has the right under the Sherman antitrust law to bring an action for damages, the expense of bringing such an action would ordinarily be prohibitive, because these companies would compel each plaintiff to prove over again the facts on which they were recently found to be guilty. And it will be borne in mind that the testimony in the Standard Oil case alone filled 24 printed volumes. A right in the individual of recovery, which would permit the company to raise again a question which has been settled against it by final judgment in a proceeding instituted by the Government, is clearly a substantial denial of right of recovery. Obviously, under any proper system for administering the law, when once a concern has been declared to have violated the antitrust law in a proceeding in which the Government, which represents all persons except the defendant, was a party, the issue ought to be deemed definitely settled for all purposes and for all times.

Second. Even if the circumstances were such as would justify an injured party in seeking compensation after these companies had been judicially found to have violated the law by Government proceeding, the private individual will probably find his claim barred, in whole or in part, by the statute of limitations, owing to the long period of time which necessarily elapses between the commencement of a proceeding by the Government to enforce the law, and the entry of final judgment.

The new bill undertakes to remedy this failure of justice—that is, to make the remedy of the individual more adequate and complete—through the following provisions:

Section 12 provides in substance that whenever in any proceeding instituted by the Government a final judgment is rendered to the effect that the defendant has entered into a combination or conspiracy in unreasonable restraint of trade, that finding shall be conclusive as against the defendant in any proceeding brought against him by any person or corporation. A person injured by the illegal combination, who brought suit for damages would, under the new bill, be relieved from proving the wrongfulness of the defendant's act. It would be neces-

sary for him to prove merely the amount of the loss which he had suffered by reason of the defendant's act—a comparatively simple matter.

Section 13 seeks to further facilitate the remedy of injured parties by enabling them to establish their claim for damages or to secure other appropriate relief in the same proceeding in which the Government obtained its final judgment. The right to file such a petition in the pending suit may often be a much simpler and less expensive course than to institute an independent suit, and it may result in a much swifter remedy by reason of the fact that the petition would come before a court which had already familiarized itself with the complicated facts involved in such litigation.

Section 14 removes the danger of the injured party losing his right to compensation through lapse of time, for it provides that a cause of action should not be barred if begun within three years after the entry of the final judgment declaring the law to have been violated.

A REAL DETERRENT.

The provisions above described would not only afford to the injured party an adequate remedy, but would also prove powerful as a deterrent to law breaking, for by every effective facility to those injured it would, in connection with the existing provisions of the Sherman Antitrust Act, under which treble damages, together with an allowance for counsel fees may be awarded, make real the financial punishment to the corporation for engaging in illegal practices. With such provisions and reasonable certainty that the Government would do its duty in enforcing the law, there would be an accounting to be rendered after a decision against the trust, which would make the conduct of its business and the holding of its securities in such a corporation extremely unprofitable. The facilities afforded to the community and to competitors for obtaining compensation for the injuries suffered are such that they would undoubtedly be widely availed of. If such were now the law, hundreds and possibly thousands of petitions would be filed at once in the courts in which the Standard Oil and Tobacco cases are now pending, which would consume a large part of those illegal profits which have been secured through defiance of the law. This provision becomes of increased importance by reason of the fact that the judicial insertion into the antitrust act of the word "unreasonable" has, from one point of view, greatly added to the difficulty of enforcing a criminal remedy against wrongdoers, it being contended by high authority that a person can not legally, or at all events properly, be punished criminally for a violation of the law when the rule of law to be observed was in itself uncertain.

APPENDIX.

[From annual reports of Attorneys General.]

W. H. H. MILLER, 1892, p. XIX.

Under the "Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, proceedings among others have been taken in the courts during the past year as follows:

In the district court of Massachusetts proceedings were instituted against a number of persons alleged to have combined for the purpose of monopolizing the trade or commerce among the several States under the name of The Distilling & Cattle Feeding Co. A special agent of the department spent many weeks hunting up the facts pertaining to the business of this concern, and those facts were, by the United States attorney in Boston, laid before the grand jury, and indictments were found against parties interested in the enterprise.

One of these indictments was quashed for insufficiency. Another indictment obtained is now pending in the circuit court, its sufficiency undetermined by that court, though in hearings had upon arrests made in Ohio and New York it was held that the facts set forth in the indictment, which it is believed are the facts as they will appear upon the proof, did not bring the case within the terms of the antitrust statute, or constitute a crime. Other indictments are also pending in that district upon which, among others, are presented questions as to the constitutionality of that statute.

Proceedings also have been commenced in the eastern district of Pennsylvania under the same law by bill in equity against parties alleged to have combined for the purpose of monopolizing the trade in refined sugars between the different States of the Union and the United States and foreign nations. In the last-named suit an answer has been filed, and the evidence is now being taken. For the purpose of assisting the United States attorney in Philadelphia in prosecuting the last-named suit, Hon. Samuel F. Phillips, of Washington, late Solicitor General of the United States, has been appointed as special counsel, and is actively engaged in the prosecution of said suit.

A suit has also recently been commenced in the Circuit Court of the Eastern District of Louisiana, in equity, against parties alleged to have combined, by threats, intimidation, and violence, to hinder and restrain interstate and foreign commerce in New Orleans and throughout the country, the purpose of said bill being to obtain an injunction against such illegal combination and conspiracy, and an order to show cause in the premises has been issued, returnable on the 26th of November, 1892.

Investigations have been made in reference to other alleged violations of this law by other alleged combinations of persons and corporations. As was to have been expected, it has been found, in all cases investigated, that great care and skill have been exercised in the formation and manipulation of these combinations so as to avoid the provisions of this statute, and, as has been seen in the proceedings growing out of the indictments in Massachusetts, these efforts have not been without success. It is hoped, however, that in the cases commenced the validity of this statute and its applicability to the abuses which have become very common in the business of the country, under the name of trusts, may be demonstrated. If so, the investigation made and the evidence accumulated in cases where no proceedings have been commenced, will be valuable.

RICHARD OLNEY, 1893, p. XXVI.

In the first place the subject matter upon which the statute operates and alone can operate is "any part of the trade or commerce among the several States or with foreign nations." There is, therefore, necessarily exempt from its provisions all that immense mass of contracts, dealings, and transactions which arise and are carried on wholly within State lines and are wholly within the jurisdiction of a State. On another ground, namely, that special and exclusive legislation has another ground, namely, that special and exclusive legislation has been enacted respecting them, railroad companies engaged in interstate transportation have been held not to be within the purview of the statute.

In the next place, the subject matter of the statute as thus limited is to be protected from (1) monopolies, (2) attempts to monopolize, (3) combinations or conspiracies to monopolize, and (4) contracts, combinations, or conspiracies, in form of trusts or otherwise, in restraint of trade or commerce. But as all ownership of property is of itself a monopoly, and as every business contract or transaction may be viewed as a combination which more or less restrains some part or kind of trade or commerce, any literal application of the provisions of the statute is out of the question. It is not surprising, therefore, that different judges who have been called upon to put a legal meaning upon the statute have found the task difficult and have generally contented themselves with deciding the case in hand without undertaking to construe the statute as a whole. To this there is one notable exception in a judgment given in the Circuit Court of the United States for the Southern District of Ohio, which deals with the statute thoroughly and comprehensively, and, coming from a judge who is now Associate Justice of the Supreme Court, must be regarded as entitled to the highest consideration. His conclusions, as briefly summarized, are: (1) That Congress can not limit the right of State corporations or of citizens in the acquisition, accumulation, and control of property; (2) that Congress can not prescribe the prices at which such property shall be sold by the owner, whether a corporation or individual; (3) that Congress can not make criminal the intents and purposes of persons in the acquisition and control of property which the States of their residence or creation sanction; (4) that "monopoly," as prohibited by the statute, means an exclusive right in one party coupled with a legal restriction or restraint upon some other party which prevents the latter from exercising or enjoying the same right; (5) and that contracts in restraint of trade and commerce as prohibited are contracts in general restraint thereof and such as would be void at common law independently of any statute.

This exposition of the statute has not so far been questioned by any court, and is to be accepted and acted upon until disapproved by a tribunal of last resort. In view of it the cases popularly supposed to be covered by the statute are almost without exception obviously not within its provisions, since to make them applicable not merely must capital be brought together and applied in large masses but the accumulation must be made by means which impose a legal disability upon others from engaging in the same trade or industry. Numerous suits under the statute, however, have already been brought—others may be—and it is manifest that questions of such gravity, both in themselves and in respect of the pecuniary interests involved, ought not to rest for their final determination upon the decision of a single judge, however forcible and weighty. I have therefore deemed it my duty to push for immediate hearing a case involving those questions, and unless prevented by some unforeseen obstacle shall endeavor to have it advanced for argument at the present term of the Supreme Court.

It should, perhaps, be added in this connection, as strikingly illustrating the perversion of a law from the real purpose of its authors, that in one case the combination of laborers known as a "strike" was held to be within the prohibition of the statute, and that in another rule 12 of the Brotherhood of Locomotive Engineers was declared to be in violation thereof. In the former case, in answer to the suggestion that the debates in Congress showed the statute had its origin in the evils of massed capital, the judge, while admitting the truth of the suggestion, said:

"The subject had so broadened in the minds of the legislators that the source of this evil was not regarded as material, and the evil in its intirety is dealt with. They made the interdiction include combinations of labor as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who enter into it."

RICHARD OLNEY, 1894, p. XXX.

In the last annual report reference was made to a case involving the meaning and effect of the act of July 2, 1890, which it was intended to push for immediate hearing in order that the grave and interesting questions raised might as soon as possible be passed upon by the Supreme Court. That case—relating to the "Sugar Trust," so called, and entitled United States *v.* Knight et al.—was docketed in the Supreme Court at the last term, but too late to be heard before the adjournment, and on motion to advance was set down for argument for October 10, and was actually argued October 24. It is believed that the decision of the court will be announced without any great delay.

JUDSON C. HARMON, 1895, p. XIII.

Among the cases of general interest decided since the last annual report of the Attorney General several deserve mention.

In United States *v.* E. C. Knight Co. (156 U. S., 1), which was referred to in the last report as having been argued and submitted, a construction was given to the Sherman antitrust law. It was held that the purchase of certain sugar refineries in the city of Philadelphia on behalf of the so-called "Sugar Trust" was not a violation of the provisions of that law, although a virtual monopoly of the business of refining sugar resulted, because interstate commerce was not thereby directly affected. Combinations and monopolies, therefore, although they may unlawfully control production and prices of articles in general use, can not be reached under this law merely because they are combinations and monopolies, nor because they may engage in interstate commerce as one of the incidents of their business.

In Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429) certain

provisions of the law imposing a tax on incomes were held to be invalid because in contravention of the Constitution, and, on rehearing (158 U. S., 601), the invalidity of such provisions was held to destroy the entire scheme for the taxation of incomes.

The sentences of imprisonment in the county jail for terms varying from three to six months imposed on Eugene V. Debs and three other persons for contempt in disobeying the orders of injunction issued by the circuit court at Chicago during the great railway strike, July, 1894, were upheld in the case of In re Debs (158 U. S., 564), and principles established which are of the highest value and importance. The jurisdiction of the courts to issue and enforce injunctions against interference with interstate commerce and the passage of the mails was fully maintained, and it was held that the action of the courts in such cases is not open to review on habeas corpus.

The decision in Todd *v.* United States (158 U. S., 278) discloses a defect in the statute (Rev. Stats., sec. 5406) punishing conspiracy against parties and witnesses to prevent them from attending court and testifying, or to injure them for having attended or testified, which was held not to apply to preliminary examinations before commissioners. The importance to the Government of an amendment supplying this defect is manifest.

JUDSON C. HARMON, 1896, P. XXVII.

On January 7, 1896, the House of Representatives, by resolution, asked me for a report concerning the action of the department under the act of July 2, 1890, commonly called the antitrust law, and for suggestions whereby its efficiency might be improved. In response thereto, on February 8, 1896, I had the honor to submit a report, which was afterwards printed as Executive Document No. 234, Fifty-fourth Congress, first session. As this subject is one concerning which public interest appears to continue unabated, I take the liberty of repeating what I then said by attaching that report hereto as Exhibit 1.

EXHIBIT 1.—ENFORCEMENT OF LAWS AGAINST TRUSTS, COMBINATIONS, ETC.

DEPARTMENT OF JUSTICE,
Washington, D. C., February 8, 1896.

THE HOUSE OF REPRESENTATIVES:

In compliance with the resolution of the House of Representatives of January 7, 1896, requesting me to report what steps, if any, I have taken to enforce the law of the United States against trusts, combinations, and conspiracies in restraint of trade and commerce, and what further legislation, if any, is needed, in my opinion, to protect the people against the same, I have the honor to say:

1. Many complaints have been made against alleged trusts, combinations, and monopolies which, in so far as they appeared to relate to matters within the jurisdiction of the Federal Government. I have endeavored to investigate as well as the means at my disposal permitted. Some such investigations are now in progress.

2. Two actions are now pending based partly or wholly on alleged violations of what is known as the Sherman Act. They both relate to agreements among interstate carriers.

3. The question, "What further legislation is needed to protect the people?" is one of general policy, and not one of law, which therefore does not pertain to my department. I assume, however, that Congress merely desires me to point out such defects in the present law as experience has shown to exist. I accordingly submit the following suggestions:

(*a*) The act of July 2, 1890, commonly called the Sherman antitrust law, as construed by the Supreme Court (see p. 13 of my annual report), does not apply to the most complete monopolies acquired by unlawful combination of concerns which are naturally competitive, though they in fact control the markets of the entire country, if engaging in interstate commerce be merely one of the incidents of their business and not its direct and immediate object. The virtual effect of this is to exclude from the operation of the law manufacturers and producers of every class, and probably importers also.

As a matter of fact, no attempt to secure monopoly or restrain trade and commerce could possibly succeed without extending itself largely, if not entirely, over the country; so that while engaging in interstate commerce may not be the direct or immediate object, it is a necessary step in all such undertakings. While Congress has no authority in the matter except what is derived from its power to regulate commerce, the States alone having general power to prevent and punish such commercial combinations and conspiracies, Congress may make it unlawful to ship from one State to another, in carrying out or attempting to carry out the designs of such organizations, articles produced, owned, or controlled by them or any of their members or agents.

The limitation of the present law enables those engaged in such attempts to escape from both State and Federal Governments, the former having no authority over interstate commerce and the latter having authority over nothing else. By supplementing State action in the way just suggested, Congress can, in my opinion, accomplish the professed object of the present law.

(*b*) Several of the circuit courts have held that the act of July 2, 1890, which used general terms, with no attempt to define them, made nothing unlawful which was not unlawful before, but merely provided punishment for such agreements and conspiracies against trade and commerce as the courts, by the rules of the common law, have always refused to enforce between the parties. The result has been great doubt and uncertainty and the failure of the law to accomplish its purpose.

If it is proposed to persist in that purpose, I suggest an amendment which shall leave no doubt about what is meant by monopolies, by attempting to monopolize, and by contracts, combinations, and conspiracies in restraint of trade and commerce.

It should not be difficult to distinguish legitimate business enterprises carried on by individuals or by associations of individuals in bona fide partnerships and corporations, however great and successful they may become by superior capacity, facilities, or enterprise, from combinations of rival concerns, no matter under what form or disguise, whose object is to stifle competition and thereby secure illicit control of the markets. The real nature and design of the organization would always be a question of fact. The courts have no difficulty in deciding the question when it arises between the parties. They would have none in deciding it as between the Government and the parties.

(*c*) The present law should contain a provision like that of the interstate-commerce law, to prevent the refusal of witnesses to answer on the ground of self-incrimination. This defect has been severely felt in all attempts to enforce the law.

The sufficiency of this feature of the interstate-commerce law is involved in a case recently argued and submitted to the Supreme Court, which will probably be decided during the present session of Congress. If the decision be in favor of the Government, a similar clause should be added to the present law against monopolies, etc.

I also suggest the propriety of making the penalties of the law applicable only to general officers, managers, and agents, and not to subordinates. The latter could not then decline to testify, and sufficient evidence can usually be obtained from them.

The difficulty of obtaining proof, on account of the cause just mentioned, might also be diminished, if not removed, by enacting as a rule of evidence that the purchase or combination in any form of enterprise in different States which were competitive before such purchase or combination should be prima facie evidence of an attempt to monopolize. This would put the parties to the necessity of explanation, which would supply the information desired.

A similar provision should be made with respect to well-known methods of doing business throughout the country which are designed to deprive dealers of liberty of trade and compel them to become instruments of commercial conspirators.

The adoption of such a rule of evidence might give life to section 7 of the present law, which permits civil actions for damages caused by such unlawful combinations and conspiracies. It is believed that difficulty of proof has been the chief reason why this section has been so nearly a dead letter.

(*d*) If the Department of Justice is expected to conduct investigations of alleged violations of the present law, or of the law as it may be amended, it must be provided with a liberal appropriation and a force properly selected and organized. The present appropriation for the detection of crimes and offenses is very small, and the time of the examiners if fully occupied by the present important duties assigned to them. It is well known that while it is quite easy to detect and prove combinations of workmen because of their large numbers and the methods which they necessarily adopt, time, care, and skill are required to obtain legal proof of combinations and conspiracies among producers and dealers, who are few in number and able to resort to skillful and secret methods.

But I respectfully submit that the general policy which has hitherto been pursued of confining this department very closely to court work is a wise one, and that the duty of detecting offenses and furnishing evidence thereof should be committed to some other department or bureau.

With a view to the efficient discharge of this duty, whoever may be charged with it, the law should provide, as the interstate-commerce law does, for compelling witnesses to attend and testify before the investigating officer.

Very respectfully,

JUDSON HARMON,
Attorney General.

JUDSON C. HARMON, 1897, P. XXV.

The Supreme Court rendered on the 22d of March last a very important decision under the act of Congress of July 2, 1890, United States *v.* Trans-Missouri Freight Association (166 U. S., 290). The decisions of the lower courts were reversed, and it was held that that act applies to railroad companies as well as others; that it applies to all contracts in restraint of trade, and not merely to contracts making unreasonable restraints; that the effect in restraining trade rather than the purpose of the contract is to be inquired into; and that a contract, legal when made, became illegal upon the passage of that act, so that acts done thereafter were done in violation of it. An injunction prohibiting the continuance of the association or of any similar arrangement was upheld. The combination was of 18 railways west of the Missouri River and was for the purpose of maintaining rates of freight. The case was argued in person by Attorney General Harmon.

JUDSON C. HARMON, 1898, P. XI.

UNITED STATES V. JOINT TRAFFIC ASSOCIATION ET AL., 171 U. S., 505.

This important case was argued on February 24 and 25, 1898, and decided October 24, 1898. It was a suit brought under the antitrust law to have the agreement creating the Joint Traffic Association declared illegal and its further execution enjoined. The joint-traffic agreement went into effect January 1, 1896. Under it 31 railroad companies, constituting 9 trunk-line systems, namely, the Baltimore & Ohio, the Chesapeake & Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh, the Pennsylvania, the Vanderbilt, and the Wabash, practically controlling the business of railroad transportation between Chicago and the Atlantic coast, entered into an agreement for the purpose of maintaining rates and fares on all competitive traffic. * * *

The court held, Mr. Justice Peckham delivering the opinion, following the Trans-Missouri case, that the joint-traffic agreement was in violation of the antitrust law, and therefore void; and it further held that Congress in dealing with interstate commerce, and in the course of regulating it in the case of railroad corporations, has the power to say that no contract or combination shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition.

JOHN W. GRIGGS, 1899, PP. XX, XXI, XXV, XXVI.

Application is occasionally made to the Department of Justice to have legal proceedings brought in the name of the United States against corporations or combinations of companies that are alleged to be engaged in forming or maintaining monopolies or agreements in restraint of trade or competition. Such actions can be maintained only when the offense comes within the scope of a Federal statute.

It will be observed that this statute is directed only at combinations or monopolies in restraint of trade or commerce among the several branches of business or commerce, or attempt in any way to interfere with those transactions which are carried on exclusively within the confines of a State or which do not amount to what, under the decisions of the United States Supreme Court, is understood by the term "interstate commerce." And this is because the statute was passed by Congress under the power conferred upon it by the Constitution (sec. 8, clause 3) "to regulate commerce with foreign nations, and among the several States." The Federal Government has not constitutional right to supervise, direct, or interfere with the transaction of ordinary business by the people of the several States unless such business relates directly and not incidentally to interstate commerce, and such has been the decision of the Supreme Court of the United States. (United States *v.* E. D. Knight Co., 156 U. S., 1.)

It apeared in the Knight case that by the purchase of the stock of four Philadelphia refineries with shares of its own stock the American Sugar Refining Co. acquired nearly a complete control of the manu-

facture of refined sugar in the United States. The Government charged that the contracts under which these purchases were made constituted combinations in restraint of trade, and that in entering into them the defendants combined and conspired to restrain the trade and commerce in refined sugar among the several States and with foreign nations contrary to the act of Congress of July 2, 1890. The relief sought was the cancellation of the agreements under which the stock was transferred, the redelivery of the stock to the parties, respectively, and an injunction against the further performance of the agreements and further violations of the act.

The court held that, conceding the result of this transaction was the creation of a monopoly in the manufacture of a necessary of life, it could not be suppressed under the provisions of the Sherman Act, because the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, which bore no direct relation to commerce between the States or with foreign nations. The object was manifestly private gain in the manufacture of a commodity, but not through the control of interstate or foreign commerce. There was nothing in the proofs to indicate an intention to put a restraint upon trade or commerce, and the fact that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree.

In the recent case of Hopkins *v.* United States (171 U. S., 578) the court reiterated its opinion that the Sherman Act had reference only to that trade or commerce which exists or may exist among the several States or with foreign nations, and has no application whatever to other trade or commerce.

And it held that in order to come within the prohibition and remedy of the Sherman Act the combination, business, or occupation sought to be condemned must be one which directly affects interstate commerce, and that combinations in a business which affect interstate commerce only in an indirect and incidental manner are not within the statute.

If the Federal Government has constitutionally the power to regulate by legislation all contracts and combinations in manufacture, agriculture, mining, and all the vast field of productive industry, including the employment of labor and the investment of capital, where not the direct but only the incidental or ultimate result may affect interstate commerce, then, as pointed out by Chief Justice Fuller, it is impossible to say what, if anything, of the ordinary business of life would remain for State regulation or control.

The ordinary affairs of business and trade, of industry and production, are governable by the laws of the several States. The State legislatures can say what methods of bargain and sale, what forms of commercial or labor contracts, what kinds of corporations or partnerships shall be permissible within their several jurisdictions. The power of control or regulation by the Federal Government exists only in exceptional instances where actually conferred by the Constitution of the United States. Such an exception is the regulation of interstate commerce. But unless authority for the control of a branch of industry or business by the United States can be found in the Constitution it can not rightfully be exercised, but must be left where it rested before the Union was founded—with the people of the several States.

Of course I do not refer here to that kind of incidental regulation sometimes exercised by the Federal Government in aid of acts levying taxes. In all such cases the object of the law is the raising of revenue, and not the regulation of the business or branch of production which is taxed. It is to secure the honest payment of taxes, not to furnish salutary safeguards for the general public.

In every instance, therefore, where resort is sought to Federal jurisdiction against combinations in restraint of trade, the first question to be decided is, What kind of trade is affected? If not that sort known as interstate commerce, then the Federal courts are without jurisdiction. It is also obvious on principle and from reference to the decisions of the Federal Supreme Court that a direct subject of the combination must be commerce; not simply production, not simply manufacture, must be commerce; not the mere application of labor or skill, but that composite transaction known as commerce, which involves the buying, selling, and exchange of commodities and their transportation and delivery.

It is also well settled and perfectly clear on principle that it is not all commerce which is subject to Federal regulation and control, but only such as is carried on between the several States or with other nations—what is familiarly and accurately called interstate commerce.

If, therefore, any particular trade, business, enterprise, system of manufacture, or production of any kind, not having the elements of manufacture or production of any kind, not having the elements of commerce as legally defined; or any such business possessing the quality of commerce, but not extending as such between the States or with other nations, but confined in commercial operation to the limits of a State, is so organized or operated as to form a total or partial monopoly which injuriously restrains trade and competition, it can not be reached under the Federal jurisdiction, but is subject only to the laws of the particular State in which it operates. There is no question of the right and power of every State to make and enforce laws in restraint of monopoly; that is the normal and proper sphere of State autonomy; while the United States, not having been formed as a Government for the regulation of the internal affairs and businesses of the State, is limited in its authority to the regulation of that kind of business described as commerce between the States and with foreign nations.

In all cases where the facts presented to the Attorney General, capable of legal proof, have established satisfactorily such an agreement or combination in restraint of interstate commerce as is contemplated by the Sherman Act, legal proceedings have been taken by him in the name of the United States either to dissolve the combination or to punish the offenders by indictment.

JOHN W. GRIGGS, 1900, PAGE V.

SUMMARY AND SYLLABUS OF THE ADDYSTON PIPE & STEEL CO. *v.* THE UNITED STATES.

[No mention of antitrust cases in reports of 1901 and 1902.]

P. C. KNOX, 1903, PAGE V.

EXTENSION OF APPROPRIATION FOR ENFORCING THE ANTITRUST LAW.

By the appropriation act of February 25, 1903 (32 Stat., 854, 903), Congress appropriated the sum of $500,000 to be expended under the direction of the Attorney General in the employment of special counsel and agents in the Department of Justice to conduct proceedings and prosecutions under the various trust and interstate-commerce laws. It has now become highly important that this appropriation should be made available for the enforcement of the laws of the United States generally, and especially those relating to public lands, postal crimes and offenses, and naturalization. In respect to these three matters a grave condition of affairs exists, as shown by recent investigations and developments.

Vast portions of the public lands have been dishonestly acquired through frauds, perjuries, and forgeries, and by similar means the laws relating to the proper administration of the Post Office Department and other branches of the public service have been grossly violated. I have just referred to the crimes and frauds practiced in connection with the subject of naturalization.

In order that the penalties provided for violation of these laws may be promptly enforced and the Government furnished with competent Government assistance for the pending investigations and prosecutions and those which will arise throughout the country, I earnestly recommend that the said appropriation be made available for the purposes indicated, to be expended under my direction.

WILLIAM H. MOODY, 1904, P. XLV.

NORTHERN SECURITIES *v.* UNITED STATES (193 U. S., 197).

[No. 277. Argued Dec. 14, 15, 1903. Decided Mar. 14, 1904.]

This was a bill in equity, filed March 10, 1902, by the Attorney General on behalf of the United States in the Circuit Court of the United States for the District of Minnesota under the provisions of the act of July 2, 1890, "To protect trade and commerce against unlawful restraints and monopolies." The chief complaint of the bill was that the Northern Securities Co. in its organization and purpose was a mere device to control and merge two competing interstate lines of railway, namely, the Northern Pacific Railway and the Great Northern Railway, and therefore embodied an attempt to invade and violate the law.

In accordance with the act of February 11, 1903, the case was certified by the Attorney General to be one of public importance, and was heard by four judges of the circuit court for the eighth circuit on March 18–19, 1903. A decision was rendered on April 9, 1903, sustaining the contentions of the United States and enjoining the Northern Securities Co. from exercising any control over said railroad companies and from permitting such control to be exercised. (120 Fed. Rep., 721.)

The case was exhaustively argued in the Supreme Court by distinguished counsel, Attorney General Knox appearing for the United States. The decision of the Supreme Court confirms the judgment below. The opinion was delivered by Mr. Justice Harlan, with whom Justices Brown, McKenna, and Day concurred. Mr. Justice Brewer delivered a separate concurring opinion. The Chief Justice and Justices White, Peckham, and Holmes dissented, Mr. Justice White and Mr. Justice Holmes delivering dissenting opinions. The syllabus which follows fully states the facts, the respective contentions of the parties, and the grounds upon which the conclusion of the court was reached. * * *

[Syllabus omitted.]

WILLIAM H. MOODY, 1905, P. XIX.

Numerous alleged violations of the Sherman Act have undergone careful examination in the department. In some cases, after full examination, the department has declined to take action, and in other cases the investigation is still in progress. Several cases are in such a state of completion that action in the near future is likely to be taken.

The consideration of this class of cases has taxed the resources of the department to the utmost. Many of these combinations have existed for a long time. They conduct their business secretly and with the aid of skilled legal advice, and their operations cover many of the States and in some instances all the States. Each proceeding undertaken has been preceded by labor, the amount and character of which can not adequately be described.

WILLIAM H. MOODY, 1906, PP. VI, VII.

The act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman antitrust law, approved July 2, 1890, has required and received much interpretation by the courts, but many questions which may be raised under it are yet unsettled. The law dealing with the interstate and foreign commerce prohibits (a) agreements "in restraint of trade or commerce," (b) agreements "to monopolize any part of trade or commerce," (c) monopolization or attempt at monopolization of any part of trade or commerce. Although decisions of the Supreme Court have shed much light upon the meaning of the words used in the law to express the acts prohibited, yet the exact limits of the meaning of "restraints" and "monopolization" have not been ascertained with precision. Moreover, although the conception of commerce among the States and with foreign nations is well defined, its application to the complex conditions of business may often raise questions whether given transactions are foreign or interstate trade, which are not easy of solution. One main purpose of the law that competition shall not by agreements be suppressed runs counter to the tendencies of modern business. The Department of Justice is without organization for the investigation of suspected offenses, though the general appropriation for the enforcement of this and laws of like character made by Congress in 1903 has to some extent supplied this deficiency. Nevertheless it is true in the main that proceedings instituted by the department have had their origin either in a complaint by some interested person or in the investigation of some other department of the Government. These reasons—the uncertainty of the meaning of the law, its conflict with the tendencies of business, and the insufficiency of the means of detecting offenses—have made its enforcement slow and difficult and obedience to its provisions far from universal. From the date of the enactment of the law to the beginning of President Roosevelt's administration in 1901, 16 proceedings were begun and have been concluded; 5 of them were indictments, in all of which the Government failed, and 11 of them were petitions in equity, in which the Government prevailed in 8 and failed in 3.

[List of proceedings omitted.]

CHARLES J. BONAPARTE, 1907, PP. III, IV.

The department has been actively engaged during the past year in the enforcement of the statutes intended to prohibit monopolies and combinations in restraint of trade and discriminations and other abuses by common carriers in interstate and foreign commerce. The policy of the department in this field of its activity has been to investigate very carefully all complaints or information brought to its attention respecting alleged offenses under the statutes in question, and to set on foot proceedings, either civil or criminal, only when fully satisfied not

merely that the laws had been violated, but that sufficient proof of such violations could be obtained to justify a reasonable hope of success in the prosecution, and that the public interests demanded action on its part for the proper vindication of the law. As a result of this policy it has had a large measure of success in the prosecutions thus instituted, but the preliminary investigation and the careful consideration given to attendant circumstances of each case have involved much labor on the part of its staff. It has carefully refrained from any action which might reasonably appear to have been undertaken in aid of litigation between private parties, although the developments of such litigation have been diligently scrutinized to determine whether action on its part may be appropriate in the public interest. It has likewise declined to act upon complaints as to matters of comparative insignificance or relating to merely formal breaches of law, believing this legislation to be directed against combinations or oppressive conduct seriously affecting the interests and commercial liberty of the community. It seems appropriate in this connection to suggest the advisability of legislation looking to the more prompt and effectual enforcement of the above-mentioned statutes. The remedy by injunction is rendered, in a large measure, ineffectual in dealing with alleged violations of law on the part of great corporations or clusters of corporations and of individuals engaged in immense combinations and enterprises by the enormous delay, expense, and trouble involved in furnishing legal proof of facts, in themselves perfectly notorious, and which are merely formally denied to compel the production of such proof. I recommended the enactment of a statute which, in such civil cases, will give the process of the courts engaged in trying them the same scope in securing attendance of witnesses as is permitted by existing law with regard to process in criminal cases for the same purpose, and will also allow courts of equity in such cases to authorize the taking of testimony before several examiners simultaneously, and in as many different districts as the courts may deem appropriate to further the ends of justice. In some of the suits instituted during the present year the prayer for relief has asked, inter alia, the appointment of receivers to adjust the business of the offending corporations to the requirements of the law, provided it shall seem to the court inexpedient to intrust this duty to the officers of the corporation itself. I respectfully suggest the advisability of an amendment to the law specifying the circumstances under which such relief may be granted and regulating the proceedings of the officers to be so appointed; rather, however, with a view to removing opportunities for misconstruction and possible misrepresentation of the purpose and scope of such relief than because I think there is any probability of unfortunate consequences from the granting of such prayers by the court. I refrain from any recommendations or suggestions as to changes of substance in the statutes above mentioned, because these would involve a consideration of questions of general policy lying beyond the appropriate field of public duty of this department, its legitimate function being to secure the effectual and impartial enforcement of all existing laws.

CHARLES J. BONAPARTE, 1908, P. III.

It has been the duty of this department to continue the enforcement of the several statutes intended to protect the interstate and foreign commerce of the country from evils arising from combinations and restraint of trade, and attempts to create monopolies, as well as discriminations and other illegal practices on the part of common carriers engaged in such commerce. The consistent policy of the department in this branch of its work has been carefully to investigate all complaints submitted to it, whether by public authorities or by responsible private citizens, and to authorize proceedings, whether civil or criminal, only when this investigation shall have shown the complaints to be serious and well founded, and that success in such proceedings might be reasonably expected. This policy was observed during the last year, as it had been previously, and was attended by a fair measure of success in the proceedings authorized. As a consequence of successive decisions already obtained or expected in the near future in causes of this character, which have been finally passed upon by the Supreme Court, the statutes above referred to will soon have been so authoritatively interpreted as to remove doubts previously existing, or alleged to exist, as to the meaning of important provisions, and individuals or corporations seeking in good faith to comply with the law thus relieved from the hardship of uncertainty as to what the law really is. It is of great moment to the community that the law should be clear and readily understood, and this is particularly clear with respect to statutes which affect the commercial relations of the whole people. In accordance with the precedent of my last annual report, I refrain from any recommendation or suggestion as to changes of substance in the said statute, but it seems appropriate to advise the Congress that serious obstacles have been encountered in their effective enforcement which can be, and, in my opinion, may be with advantage, readily removed by further legislation.

GEORGE W. WICKERSHAM, 1909, P. III.

During the incumbency of my predecessor and since my accession to office the department has continued the policy of enforcing the several statutes intended to protect interstate and foreign commerce of the country from evils arising from combinations in restraint of trade and attempts to create monopolies in the manner outlined in the last annual report of the Attorney General, that policy being, as therein stated, carefully to investigate all complaints submitted to the department, whether by public authorities or by responsible private citizens, and to authorize proceedings, whether civil or criminal, only when this investigation shall have shown complaints to be serious and well founded, and that success in such proceedings might be reasonably expected. * * *

GEORGE W. WICKERSHAM, 1910, P. II, III.

* * * It has been the policy of the department to carefully investigate all complaints made to it concerning contracts, combinations, or conspiracies in restraint of trade or commerce in violation of the Sherman Act. Many of these complaints upon investigation prove to be groundless or develop sources of complaint wholly outside of the scope of the Federal law. The decisions of the Supreme Court, however, sustain beyond controversy the proposition that every contract, combination in the form of trust or otherwise, or conspiracy having for its purpose or directly and necessarily effecting the control of prices, suppression of competition, creation of a monopoly, or other obstruction or restraint of trade or commerce among the States is made illegal by the Sherman Act; and that every person who shall make such contracts or engage in such combination or conspiracy is guilty of a misdemeanor and liable to fine and imprisonment. Therefore, when the evidence tends to show that the defendants have combined under contract, agreement, trust, or otherwise, with the obvious intention of restricting output, dividing territory, fixing prices, excluding competition, or otherwise restraining interstate or foreign commerce, or attempting to monopolize commerce among the States, or with foreign countries, the department has considered these facts as evidence of such a deliberate attempt to violate the law as to justify the use of any or all of the remedies provided by law which are adequate to prevent the accomplishment of such purposes and to punish the attempt. In such instances the department endeavors, when the evidence warrants, to secure the indictments of the individuals responsible for the acts complained of. In the administration of this law, however, the department has refrained from instituting criminal proceeding where the evidence merely tends to show that men without intent to violate the law have acted in technical contravention of it, and in such cases has resorted to civil proceedings to restrain a continuance of the acts complained of. * * *

The VICE PRESIDENT. The bill will be referred to the Committee on Interstate Commerce.

FINAL ADJOURNMENT.

Mr. WARREN. From the Committee on Appropriations, I report favorably, with an amendment, the concurrent resolution which I send to the desk, for which I ask present consideration.

The VICE PRESIDENT. The resolution will be read.

The Secretary read the concurrent resolution (S. Con. Res. 8) submitted by Mr. PENROSE August 15, 1911, as follows:

Resolved by the Senate (the House of Representatives concurring), That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the 22d day of August, 1911, at 2 o'clock p. m.

The VICE PRESIDENT. The Senator from Wyoming asks unanimous consent for the present consideration of the concurrent resolution. Is there objection?

Mr. BAILEY. Mr. President, of course, I am not in the confidence of the administration, and it is impossible for me to have any positive knowledge of what is going to happen to the bill which we passed here two days ago, and which I am permitted by the rules to say is now pending in the House of Representatives. Personally I should not be willing to vote for any resolution to adjourn this session of Congress until the President has had an opportunity to dispose of that matter, and until the House and the Senate, if it should come to the Senate, have had an opportunity to reconsider it. If this resolution should be adopted by the two Houses, it would be an invitation for the President to execute a pocket veto on that measure. I think the President would be warranted in assuming that the Congress desires him to dispose of it in that way if we adjourn before he has either approved or disapproved it.

Mr. WARREN. Will the Senator yield for a moment?

Mr. BAILEY. Certainly.

Mr. WARREN. I wish to say, Mr. President, that the resolution having passed here, it becomes the property of the House of Representatives, and I assume that the House will not consent to a date that would embarrass itself. As to the suggestion in regard to the signature of the President or his failure to sign, that is a matter of some 10 days; and if the Senator takes the ground that upon all these measures we should wait until that time, I assume he would, of course, have to have the cooperation of the House.

Mr. BAILEY. No, Mr. President, I would not take that position necessarily. If there were unimportant or uncontested matters to be presented to the President, I would assume that he would come, as he frequently does, to the room set apart for him at this end of the Capitol, where he could promptly affix his signature to such measures as he approved, without the delay of sending them to the executive office; but I do think that if we adopt this resolution before that bill is even sent to him, it would appear, at least, to be an invitation for him to let the Congress adjourn without returning it with his disapproval. I am inclined to believe this is the first time during my 20 years of service in the two Houses that the final adjournment resolution has been adopted first by the Senate. I say that, however, with some reserve, because I am not sure that I am right about it; but, Mr. President, if we are to adjourn, I want to employ this occasion to put into the RECORD some matters touching the tariff question, and I shall occupy but a moment in doing so.

Several times in our recent debates I asserted that in placing hides on the free list the tariff law of 1909 had inflicted a very great loss upon our farmers and ranchmen. That assertion was each time challenged with more or less directness; and I want to read into the RECORD a brief extract from Taussig's Tariff History of the United States. Prof. Taussig has for several years, with the passage of each new tariff law, printed a new edition of his very excellent history of the tariff, and the last includes a discussion, somewhat in detail, of the act of

1909. This is what he says about the effect of the repeal of the duty on hides, on page 383 of the fifth edition of the book:

It happened, too, that the duty on hides had not been, like so many on crude products, of limited effect. The imports were a considerable portion of the total supply, and the imported and domestic hides came in competition in the same market. The case was one where the protective duty had its full effect; the price of the whole domestic supply, as well as of that imported, was raised by the amount of the duty.

I take it that no advocate of free raw materials will be disposed to controvert this statement of Prof. Taussig, because, among the many earnest and intelligent advocates of that peculiar doctrine, he stands preeminent. He is himself, and he has been for many years, an earnest advocate of free hides, and therefore when he says that the duty on hides "raised the price of hides to the full amount of the duty," it will be accepted, at least by those who follow his teaching, as conclusive.

When we reflect, Mr. President, that there are more than 5,000,000 cattle killed at the principal market places of the country, and that throughout the entire country there are more than 12,000,000 cattle slaughtered every year, allowing a minimum reduction of a dollar and a half in the price of each hide, it signifies that the free-hide provision of the Payne-Aldrich bill has diminished the receipts of the farmers and ranchmen of this country more than $18,000,000 a year on that single item.

Not only does Prof. Taussig take the view I have often expressed as to hides, but I find no little satisfaction in the fact that he expresses the same view that I have often expressed with respect to the duty on lumber. When I resisted the repeal of the duty on lumber in 1909 I asserted, as Senators will recall, that in the nature of things the repeal of that duty could only affect the price of lumber in a very limited territory. I repeatedly declared during that debate that as to the Southern States, and particularly as to my own State, the freight rate would render the tariff of $1.50 or even $2 a thousand wholly immaterial. Of course I did not need the statement of Prof. Taussig or of any other professor or tariff expert to confirm me in that opinion. By taking the price of lumber at the Canadian mills and adding to that the freight per thousand feet, I could easily demonstrate that by the time Canadian lumber reached Texas it would be worth at least $6 a thousand more than our people were then paying. But that argument has been so often assailed by those who do not understand the question that I am gratified to offer this authority in support of it, and, with the permission of the Senate, I will read what Prof. Taussig has said on that subject:

No doubt the cheapening of materials sometimes affects only a part of the market. Lower duties on coal and lumber, or their free admission, have but a limited range of influence. Free coal, as has already been said, would be to some advantage for coal users in New England and the extreme Northwest, though in both districts the possible consequences are much exaggerated, both by advocates and opponents. Free lumber would lead to a slightly larger importation from Canada along the eastern frontier, but probably to none of any moment in the Northwest. It would check a bit, even if only a bit, the wastage of our own forests, and in so far is clearly sound policy. Not a few southern Representatives voted for the retention of the duty on lumber, and their votes turned the scale in its favor. Yet, both because of geographical limitation of competition and because of the different quality of southern lumber, the duty is of no real consequence for their constituents.

And so, as to the section from which I come, the influence of the repeal of the lumber duty was simply a surrender of so much revenue, without the slightest benefit to our people.

While I am on my feet I believe I will also incorporate in the RECORD a resolution adopted by the Farmers' Union of the State of Texas at its recent meeting, held in the city of Fort Worth on the 3d day of the present month, in which that body of honorable and intelligent men records its emphatic opposition not only to the Canadian reciprocity treaty, but to the whole proposal, now definite and systematic, to strip the farms of this country for the benefit of our cities and industrial centers.

I will ask the Secretary to read the resolution which I send to his desk.

The VICE PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

Whereas during the past few years, as a result of short crops, increased demand, better methods of farming, and more intelligent marketing the agricultural classes of the Nation have received fairer prices for the product of their labor, and as a result American farmers are becoming more prosperous and independent, and agriculture is in a fair way of being restored to its proper station of dignity and importance; and

Whereas we believe the prosperity and well-being of the agricultural classes injure no man, but are a benefit to all; and

Whereas we believe no obstacle should be placed in the way of the continued progress of the farmer and no discrimination practiced against him; and

Whereas we believe it an unjust discrimination for the Government to compel the farmer to sell the products of his labor in free competition with all the world while forcing him to buy in a restricted and protected market, thus compelling him to pay heavy taxes to the Government and unjust tribute to manufacturers, while the latter is permitted to escape payment of tariff taxes and is enabled to beat down the price of farm products: Therefore, be it

Resolved by the Texas State Union, Farmers' Educational and Cooperative Union of America, That we declare our belief that all tariff taxes should be fairly and equitably distributed and that it is unfair and unjust to exempt manufacturers from the payment of taxes on their raw material while compelling the producer to pay heavy taxes on manufactured articles. We denounce such a system of favoritism toward manufacturers and a discrimination against producers; and be it

Resolved further, That we extend our sympathy to our brothers of the National Grange in the northern and western States in their unsuccessful fight to prevent the passage by Congress of the Canadian reciprocity bill, which places the products of their farms on the free list while retaining high rates on manufactured articles. We assure our brothers that we have not forgotten that an injury to one is the concern of all, and pledge them our sympathy and support in their efforts to secure justice for American farmers.

Adopted Thursday, August 3, 1911.

Mr. BAILEY. Mr. President, at the same meeting there was, in addition to that general resolution, another resolution adopted with respect to the failure of the Senate to provide free bagging and free ties for the farmers of the South on the Canadian reciprocity treaty. I present this resolution with some little hesitation, because it rather severely arraigns the Senators from the Southern States for their votes in that matter, but as it was sent to me under the seal of that organization, and as they are my constituents I feel that they are entitled to have it presented to the Senate, and I ask the Secretary to read it.

The VICE PRESIDENT. Without objection, the Secretary will read the resolution, as requested.

The Secretary read as follows:

Resolution passed by the Farmers' Educational and Cooperative Union of Texas in convention assembled at Fort Worth, Tex., August 1 to 4, 1911.

Whereas the American cotton farmers produce more cotton for the use of mankind than any other section of the world, and they are burdened by a tax on bagging for cotton and ties for cotton, and by virtue of this fact the Jute Trust and the Cotton Tie Trust force the cotton farmers to pay them a profit amounting to millions of dollars annually; and

Whereas the cotton producers are entitled to purchase their bagging for cotton and their ties for cotton without paying unreasonable profits to manufacturers, and the present makers of bagging and ties are protected by a duty levied by the United States Government at the expense of the cotton producers: Now therefore be it

Resolved by the Texas Farmers' Union in annual session at Fort Worth on August 1 and 2, 1911, That we favor the admission free of duty into the United States of all forms of bagging for cotton and all sorts of cotton ties, and we condemn the recent action of the United States Senate in voting against free bagging and ties and against the proposition to make this feature a portion of the reciprocity bill, and we condemn the action of all Southern Senators who voted against above features, and we commend those who voted for them; and be it further

Resolved, That a copy of this resolution be sent to Hon. CHARLES A. CULBERSON and Hon. JOSEPH W. BAILEY, United States Senators from Texas, by the State secretary.

Mr. BAILEY. Mr. President, I think that those worthy gentlemen were well within their rights when they complained at the Senate for its refusal to amend the Canadian agreement by adding a provision for free bagging and free ties as a separate and independent section. We can not forget, sir, that those men for many years have been supplying our commerce with the one commodity which has always turned the balance of international trade in our favor. Except for the cotton which they have produced and which we have sold to the world, that balance of trade would have run against us as often as it would have run in our favor. Nor must we forget that even in our own markets they sell their cotton in competition with the world, because this Government levies no tax on imported cotton, although a moderate tax of one-fourth as much as is now levied on the woolen goods which our farmers buy would yield more than $2,500,000 in annual revenue to the Public Treasury.

Nor is that all. The cotton-bagging manufacturers are permitted to import free of all duty the raw material out of which they manufacture this cotton bagging, and yet the American Congress stubbornly refuses to remit to this large and this worthy class of our people the tax which they are compelled to pay for the material with which they dress their great crop for market.

I knew, and I think if other Senators had calmly consulted their judgment they would have known, that had we added the entire free-list bill as an amendment to the Canadian reciprocity treaty the President would have approved it. But conceding that you may have been right about that, and that I may have been wrong, I eliminated from that free-list bill everything except cotton bagging and cotton ties and grain bags for the western farmer and offered that as an amendment to the Canadian agreement, but for reasons which, of course, I must consider sufficient for them, a majority of the Senate voted it down.

I do not often indulge in the practice, generally reserved for good women, of saying, "I told you so"; and yet I can not refrain here and now, when you are proposing a motion to adjourn, from reminding you that I then warned you that unless you attached the wool bill and the free-list bill to the reciprocity

treaty, we would never be able to enact either one of them into a law.

A Republican President has been able to secure his reciprocity bill, but Democratic Senators are standing around, like helpless children whose candy had been taken out of their hands.

Mr. PAGE. Mr. President, I happen to be one of those Senators who during the consideration of the Payne-Aldrich bill voted for free hides. I am a pretty good Republican myself. I believe in a fair degree of protection to every American industry, not excepting the raising of hides, if that may be called an industry. But I want to say to the Senator from Texas, if I may be permitted, that I dislike to have him overstate, as he has, the great loss or damage that has come to the American farmer by reason of the removal of the duty on hides. He says that the loss has been fully $1.50 per hide.

Now, anyone conversant with the hide trade knows that an average hide weighs about 50 pounds, and an average high price of hides abroad up to the passage of the Payne-Aldrich bill—and I think it was absolutely that at that time—was 10 cents per pound. Ten cents per pound means that a 50-pound hide is worth $5; and the 15 per cent duty means 75 cents; and where the Senator from Texas is able to figure $1.50 is beyond my comprehension.

Mr. BAILEY. The Senator from Vermont, of course, understands that, under a Treasury ruling, the smaller hides were held not dutiable under the act of 1897. It is only the larger hides that were subject to duty, and a gentleman who seemed to know as much about it as anybody testified before the Committee on Finance that the loss was $3 a hide. I have no doubt myself, from my own knowledge of it, it would amount to something like a dollar and a half, not less than that, on the hides which were subject to a duty.

Mr. PAGE. The Senator from Texas speaks of no hide being dutiable except heavy hides. All hides, or all that are known in the market as hides, are dutiable, but we designate a hide only as a hide when it weighs 25 pounds.

Mr. BAILEY. That is because the lighter hides were not required to pay a duty, and so they were not hides to the tanners and the shoemakers unless they paid the duty.

Mr. PAGE. But in the markets of the world we designate the skin of an animal of the bovine species as a "skin" until it reaches the weight of 25 pounds. Everything weighing 25 pounds and above pays the duty and is classified as a "hide."

Mr. BAILEY. Oh, no; the hide of a yearling steer would not be heavy enough to pay the duty, but we do not call that a skin. We call a calf's hide a skin; but after it is more than a calf, after it is a year old or older, we call it a hide; that is, cattlemen do. I do not know, of course, how the manufacturers designate it.

Mr. PAGE. The Senator from Texas is simply mistaken. When any hide weighs as much as 25 pounds, I care not if it comes from a calf—and I have seen a calfskin weighing more than 50 pounds—it is then dutiable, and the classification of the customhouse is purely on the weight of a green, salted hide, as we know it in the trade, and that is 25 pounds.

Now, 25 pounds is the minimum weight of a dutiable hide, and everything weighing 25 pounds—green salted, as it is called by the trade—pays a duty. The average runs from 45 to 55 pounds. In my judgment the average hides of this country will run under 55, and probably about 50 pounds, after they are in the trimmed and cured condition.

The price of hides in Montreal, for instance—because I am conversant with that market—on the day we passed the Payne-Aldrich bill was 10 cents a pound. Consequently the duty, if a hide averaged 50 pounds—and that is a fair average—would be 75 cents per hide. I can not see how by any computation it can be said that the farmer is wronged more than 75 cents per hide if he is wronged to that extent.

But I want to say to the Senator that the extreme of the hide market for what we term a buff hide, which is the common hide of this country, has been about 14 cents. There has very rarely been a time when it has been higher than that, and a high average has been 12 cents, and a so-called buff hide to-day is worth about 12 cents per pound. Hides are high to-day, but I want to say to the Senator that I do not urge this as a reason why we should or should not have a duty on hides. I think there is a strong reason why hides should be free, and it is this: The packers of this country to-day kill more than 40 per cent of all the domestic cattle from which the hides are taken, as I understand and believe. Now, in addition to that, the packers of this country, notably the Swifts, have gone into the country markets, and to-day they—the Swifts—control in New England from 70 to 80 per cent of all the country kill. What else? The Swifts to-day are the largest tanners of this country and the result is that when a tanner of American hides wants to buy the raw material for his tannery, he has to go into the market and buy it of his competitors, the Swifts or the Armours.

The result is that that large industry, the tanning industry, which, I believe, is ninth in the amount of capital invested and eleventh in the amount of men employed, was absolutely on the verge of being driven out of business because it was compelled to buy its raw material of its competitors. Everyone knows that, as a commercial proposition, that can not be done.

I do not want to introduce here any discussion of the old hide tariff, except to say what I designed to say when I rose, and that is that the Senator from Texas, by looking up the facts, will find that the average of hides in this country, by and large, is about 50 pounds; that the price in the foreign market is about 10 cents a pound at a high average, making a hide worth $5, and the 15 per cent duty makes 75 cents, no more and no less. I should like very much to have the Senator quote the statistics which disprove this statement.

Mr. BAILEY. The mistake of the Senator from Vermont consists partly, if not wholly, in taking the average of all hides imported. I repeat that by a Treasury construction of the law hides below a certain weight were not dutiable under the act of 1897, and prior to that act, from 1883, hides of no kind were subject to a duty. Of course, if you take the average of the hides imported they will not be much heavier than the Senator from Vermont says. But the hides which we import are not the kind of hides we produce at home, because we import most of our hides from countries which grow smaller cattle. To illustrate what I mean: The hides imported from Mexico will not average one-half the weight of the hides produced in Illinois or Indiana, because Mexican cattle are very much smaller than our native cattle. Indeed, sir, the hides produced by the cattle of Texas will not weigh more than 70 per cent of the hides produced by what in the Chicago market are called native cattle, coming from Iowa and Illinois and Indiana and the great corn belt. The hides we produce in this country unquestionably suffer a diminution of price equal to $1.50.

I rose, however, to rejoin more to the Senator's statement that the Swifts control the hide supply of the country. I have heard that a long time, and there was a time when what is known as the Beef Trust, four or five great concerns in Chicago, very nearly controlled the price of cattle, and of course in controlling the price of cattle they controlled the price of the by-products of cattle, one of which is the hide. But, Mr. President, there was never anything plainer than this: If the Beef Trust could control the price of cattle, whenever they were compelled to sell the whole of the cow or steer for $1.50 less than they otherwise would, they would pay $1.50 less when they bought it, and if their control of the market was complete, for every $1.50 that they were compelled to surrender when they sold the steer, his meat or his by-products, they would be apt to take $2.50 from the price which they would pay the farmer or the ranchman.

But I rejoice to say that it is no longer true that the great packing companies of Chicago absolutely control the price of cattle in this country. I will not undertake to explain how it has happened. Some gentlemen believe it was caused by the threat of prosecution under the antitrust law. Other gentlemen believe it was the aggressive protest of the cattlemen of the country, who threatened to join with the Government and to furnish the testimony against the combination. Still others believe that an investigation ordered several years ago by the Senate and conducted with consummate ability, mainly by the late Senator from Missouri, Mr. Vest, contributed largely to that result. But whatever has produced the result it is now true that more than 40 per cent of the cattle shipped to the Chicago stockyards are purchased by competing buyers and reshipped to other sections of this country. And it is, sir, due to the establishment and successful operation of plants in all of the great eastern cities, and due to other plants in even southern cities, that when the farmer or grazer now ships his carload or his trainload of cattle to Chicago, he has the benefit of a substantial competition.

But with or without that competition it would be equally true that whatever affects the price of the steer affects the price generally of every part of it, although it is easily conceivable that the price of the steer can advance due wholly and only to an advance in the price of meat. The blood, the hair, the hide, the hoof, and all of the by-products might remain absolutely stationary in price, and yet the price of the steer might rise due to the meat alone. On the other hand, it is entirely possible that the price of the steer would fall, although

the price of the meat might not be affected the fraction of 1 cent on the hundred pounds, the fall coming about through a fall in the price of these by-products.

It is said—I have never heard one of them say it, but I have been told by gentlemen who profess to have heard them say it—that the packers of this country would be content with a profit on every steer equal to the price of the blood and the hair; and gentlemen familiar with the business tell me that this alone would enable the packers to declare a handsome dividend on their enormous capitalization.

But however much of value these by-products may have, it is as certain as the operation of an economic law that as their price falls, the value of the steer which yields them must fall. But again I commend to the Senator from Vermont the conclusive and the clear admission of Prof. Taussig. When we had this question up before the Senator from Vermont was not willing to admit, as I remember, that the repeal of the tariff would reduce the price of hides.

Mr. PAGE. I have never taken that position. I have always believed it would.

Mr. BAILEY. Did the Senator in that debate tell the Senate that it would?

Mr. PAGE. I said that I thought it would not diminish the price of hides to the full extent of the duty waived, but I have always believed that it would reduce the price somewhat.

Mr. BAILEY. Somebody diverted my attention just when the Senator began to qualify and limit the effect of repealing the duty. My recollection of it was that he said it would not reduce it at all. But I accept his present statement, and although I would not invite a comparison between an eminent New England statesman and a scholarly New England professor, I must oppose against the statement of the Senator from Vermont the statement of this Harvard professor. He says that the duty raises the price of hides the full amount of the duty, and of course, if that is true, repealing the duty will reduce the price of hides its full amount. I leave the Senator from Vermont to settle that question with Prof. Taussig.

Mr. PAGE. Mr. President, a professor in a college is a very learned man; he can oftentimes prove theoretically almost anything; but I want to state to the Senator from Texas at this time that the price of hides to-day is as high as it was at the time we passed the Payne-Aldrich bill.

Mr. BAILEY. But not so high as they were, for instance, 2 years ago or 18 months ago.

Mr. PAGE. The price of hides fluctuates.

Mr. BAILEY. Of course.

Mr. PAGE. They were in Canada on the 5th day of August, 1909, when we passed the tariff bill, 10 cents per pound.

Now, I want the Senator to listen to one little fact which I wish to state, and which is simply mathematical. If the average of a hide is only 50 pounds, but to make it beyond any peradventure I will say less than 60 pounds—and I am sure the Senator will give me credit for saying what I think I know—and if the price of hides is 10 cents in the foreign market and the duty is 15 per cent, it would mean 1½ cents per pound. If the average weight of hides is 50 pounds, it would mean a duty of 75 cents; if it is 60 pounds, it means 90 cents.

Mr. BAILEY. And if 100 pounds, $1.50.

Mr. PAGE. I state that the average hide to-day is between 50 and 60 pounds. I think 50 pounds a fair average.

Mr. BAILEY. If you take them all, that is true; but of the best that is not true.

Mr. PAGE. Of the hides the farmers raise in this country there are two classes. There is the class known to the trade as extremes, running from 25 to 40 pounds; then there is the class known as buffs, weighing 40 to 60 pounds. In addition to these there are the steer hides, but they are smaller in quantity. I say to the Senator, in all good faith, that in my opinion the average of hides is below, rather than above, 60 pounds, and therefore it can not be true that the loss is $1.50 on a hide, or even $1.

Now, one word more in regard to the control of the Swifts, because I suppose there is no harm in coming to that fact in the concrete. I say to the Senator that 20 years ago it was possible for a tanner to go into the Boston market and buy of any one of half a dozen hide dealers three, four, and five thousand New England hides. I want to say to him that to-day I do not believe there is one place in New England, outside of Swifts and one other, where you can go and buy 5,000 New England hides; I do not think you can buy 3,000. The facts are that in nearly every prominent city of New England the Swifts have bought out the hide business. The exceptions are very few, including Pittsfield, Mass., and three or four smaller towns. They absolutely control 70 to 80 per cent of the country kill of hides in New England. With that control in the hands of the Swifts, and being, as I believe they are, the largest tanners of New England, indeed they are fast coming to be the largest in the country, because they are constantly enlarging their plants—with that fact so patent that nobody to-day in the leather trade denies it, it comes to this, that controlling the country hides and 40 per cent of the packers' hides, the large tanning firms of the country are compelled to buy their raw material—their hides—of their competitors, a condition so ruinous that it would, in my judgment, have driven out of business in a few years the independent tanners of this country. The fact that we opened our doors to the whole world and gave them a chance to go into the world's markets to buy their hides has been their salvation.

One word more, because I know we are getting to a late hour, I want to make one further statement in regard to hides. We are a prosperous people, and year by year the price of the raw material which enters into the manufacture of boots and shoes has been advancing. I want to say to the Senator that to-day the price of calfskins is higher than ever before in the history of calfskins; as to the weights known to the trade as 5 and 7 and 7 to 9 pound trimmed skins, the weight that enters largest into the manufacture of men's shoes, the price is so high that we are compelled now to take the hide and split it; and it has come to pass that an expert tanner can take the grain of the hide and so far manipulate it that it looks like a calfskin. We are very fortunate to-day if we wear calfskin. We look down upon our shoes believing that we are wearing calf, when in reality we are wearing leather made from hides.

That is a condition, not a theory, and I do not care what the professor at Harvard says. I know what the facts are. You can not make on a 60-pound hide, bearing a 15 per cent duty, and worth 10 cents per pound in the foreign market, a difference of $1.50. The Senator can figure that very easily if he will take a pencil. He ought to be able to do it in his head.

Mr. BAILEY. Mr. President, the misfortune of a man who is altogether practical is that he attaches too much importance to the narrow facts within his own experience. The Senator from Vermont has just said that Swifts control 40 per cent of the packers' hides in this country. He will revise that when he looks a little further and compares the business of Swifts with the business of Armour, Morris, Schwarzschild & Sulzberger Co., and other packers who are killing almost as many cattle in this country as Swift & Co. themselves.

Mr. PAGE. Mr. President, I wish to correct myself. If I said Swifts; I meant the packers of this country.

Mr. BAILEY. I have made some progress toward correcting these mistakes, and if I could prolong this session I would have the Senator from Vermont entirely straight before I got through.

Now, Mr. President, the Senator also makes a mistake when he says the steer hide is an inconsiderable supply of hides. Except the calves practically all of the cattle that go to the great packing establishments are steers. The ranchmen and the farmers only send the cows there when the times are hard or the grass is short or the cow is old. When the cow is old and is shipped there, she generally goes into the cans. She does not go for beef even to the workingman's table of this country; she goes into the can to become beef for the underpaid workingmen of other countries.

The cow at the stockyards is vastly less important than the steer, because the steer goes there whenever he is ripe. After he is ripe, to keep him on the farm or the ranch one day is an actual and absolute loss, for when he is ripe he will not only fetch as much per pound as he ever will, but he weighs as much as he ever will, and to keep him even on the pasture, if you could preserve his fat and preserve his weight and finish, would, after all, be a clear loss to the extent of the pasturage besides the chance of death or injury to him. The whole steer crop of this country is marketed at these packing houses and other butcher shops. The cow crop of this country is only marketed under the extraordinary circumstances which I have just related.

My estimate is more moderate than any cattleman will make, as the Senator from Vermont can easily inform himself by looking at the committee hearings when the cattlemen appeared before us and gave their testimony; but even if we were willing to go down, which I will not do, because that is not right, to the 60 pounds suggested by the Senator from Vermont at a cent and a half a pound, as he figures it, instead of 15 per cent, a hide is sometimes worth 14 and 15 cents a pound—if I were willing to go down to that point, however, it would be 90 cents on a head, and on the total slaughter of 12,000,000 a year the loss would represent the stupendous sum of $10,800,000.

Mr. President, I understand that the Senator from Virginia has conferred with our friends in the House about this adjourn-

ment resolution and that it is agreeable to them. I shall not, therefore, interpose any further objection.

Mr. MARTIN of Virginia. Mr. President, I simply desire to say that the resolution is in accordance with the judgment and wishes of those chiefly charged with the conduct of the business unfinished now in the House of Representatives. It is for the purpose of facilitating final adjournment. It will not be adopted in the House unless those conditions which have been referred to by the Senator from Texas are attained before we reach the day and hour named. I think that its passage will facilitate final adjournment, and I hope that it will be adopted.

The VICE PRESIDENT. The amendment of the committee will be stated.

The SECRETARY. On page 1, line 6, strike out "two" and insert "three," so as to read "3 o'clock p. m."

The amendment was agreed to.

The VICE PRESIDENT. The question is on agreeing to the concurrent resolution as amended.

Mr. MYERS. On that I ask for the yeas and nays.

The VICE PRESIDENT. Upon the adoption of the resolution the Senator from Montana asks for the yeas and nays. Is there a second to the demand. [A pause.] Eight Senators have seconded the demand—not a sufficient number. The yeas and nays are refused on the resolution.

The concurrent resolution was agreed to.

Mr. MYERS. I wish the RECORD to note that I voted "no" on the adjournment resolution.

The VICE PRESIDENT. The reporters will have in the RECORD the statement of the Senator from Montana.

PAY OF EMPLOYEES.

Mr. WARREN. I am directed by the Committee on Appropriations, to which was referred the joint resolution (S. J. Res. 58) to pay the officers and employees of the Senate and House of Representatives their respective salaries for the month of August, 1911, on the 23d day of said month, to report it with an amendment, and I ask unanimous consent for the present consideration of the joint resolution.

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

The amendment of the Committee on Appropriations was, in line 10, before the word "day," to strike out "twenty-third" and insert "twenty-second," so as to make the joint resolution read:

Resolved, etc., That the Secretary of the Senate and the Clerk of the House of Representatives be, and they are hereby, authorized and instructed to pay the officers and employees of the Senate and House of Representatives, including the Capitol police, their respective salaries for the month of August, 1911, on the 22d day of said month.

The amendment was agreed to.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A joint resolution to pay the officers and employees of the Senate and House of Representatives their respective salaries for the month of August, 1911, on the 22d day of said month."

THE INITIATIVE AND REFERENDUM.

Mr. OWEN. I desire consent to place in the RECORD an argument, showing that the initiative and referendum is a republican form of government, submitted by myself and others before the supreme court of Oregon.

The VICE PRESIDENT. Without objection, permission is granted.

Mr. WILLIAMS. Wait a moment, Mr. President. What is the request?

Mr. OWEN. The request is to have placed in the RECORD an argument submitted before the supreme court of Oregon by myself and others to the effect that the initiative and referendum is a republican form of government.

Mr. WILLIAMS. I should feel ordinarily very much opposed to objecting, but I do not think the CONGRESSIONAL RECORD ought to be regarded as an instrumentality to carry arguments on questions of that sort. I shall object.

The VICE PRESIDENT. Objection is made.

GOVERNMENTAL CONTROL IN ALASKA.

Mr. LA FOLLETTE. Mr. President, out of the regular order I offer a Senate resolution.

The VICE PRESIDENT. Without objection, out of order, the Senator from Wisconsin offers a resolution which will be read.

The resolution (S. Res. 144) was read, as follows:

Whereas the mineral and other resources of Alaska belong to all of the people of the United States; and

Whereas under existing law these resources must remain undeveloped or be turned over to private monopoly, through control of transportation facilities: Therefore be it

Resolved, That while the people of Alaska are entitled to, and of right should be granted by appropriate congressional action, the largest measure of home rule, with its representative assemblies responsible to the people, it is the sense of the Senate that the Government should own and operate all railroads, docks, wharves, and terminals, make provision for operating mines and leasing mines at reasonable royalties, with suitable safeguards for prevention of waste and security of life, and, in general, provide for proper conservation and development of the natural resources of Alaska, to be administered by a board of public works, to be appointed by the President and confirmed by the Senate.

Mr. LA FOLLETTE. I ask that the resolution lie on the table.

The VICE PRESIDENT. Without objection, it will lie on the table.

Mr. LA FOLLETTE. And I give notice that I will submit some remarks on the resolution——

Mr. WILLIAMS. I understand that the question of the Government ownership of railroads is involved in the proposition. Is that right or not?

Mr. LA FOLLETTE. It is.

Mr. WILLIAMS. Then I object.

The VICE PRESIDENT. The request is that the resolution lie on the table.

Mr. WILLIAMS. Oh!

Mr. LA FOLLETTE. I ask that the resolution lie on the table, and I give notice that on Monday morning, after the routine business, I will submit some remarks on the resolution.

The VICE PRESIDENT. The resolution will lie on the table.

NEW MEXICO AND ARIZONA.

Mr. SMOOT. I am directed by the Committee on Printing to ask that 75,000 extra copies of House Document No. 106, being a special message of the President of the United States returning without approval House joint resolution No. 14, to admit the Territories of New Mexico and Arizona as States into the Union on an equal footing with the original States, be printed for the use of the Senate document room.

The VICE PRESIDENT. Without objection, the order is entered.

EXECUTIVE SESSION.

Mr. NELSON. I move that the Senate proceed to the consideration of executive business.

Mr. SMOOT. Will the Senator from Minnesota withhold the motion for a moment?

Mr. NELSON. I will withhold it for a moment.

Mr. SMOOT. The junior Senator from Iowa [Mr. KENYON] desired to speak for about 15 minutes. I do not see him in the Chamber.

Mr. NELSON. We can go back into legislative session.

Mr. SMOOT. Very well; the Senator suggests that we can go back into legislative session if it is desired.

Mr. NELSON. I renew my motion.

The VICE PRESIDENT. The Senator from Minnesota moves that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 10 minutes spent in executive session the doors were reopened, and (at 4 o'clock p. m.) the Senate adjourned until Monday, August 21, 1911, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate August 19, 1911.

PROMOTION IN THE ARMY.

Under the provisions of an act of Congress approved March 3, 1911, the officer herein named for advancement in grade in accordance with the rank he would have been entitled to hold had promotion been lineal throughout his arm of service since the date of his entry into the arm to which he permanently belongs.

CAVALRY ARM.

Lieut. Col. Hugh L. Scott, Cavalry, unassigned, to be colonel from August 18, 1911.

PROMOTIONS IN THE NAVY.

The following-named lieutenant commanders to be commanders in the Navy from the 1st day of July, 1911, to fill vacancies:

James F. Carter and

George C. Day.

The following-named lieutenants to be lieutenant commanders in the Navy from the 1st day of July, 1911, to fill vacancies:

Chauncey Shackford,
Edward S. Jackson, and
Henry L. Wyman.

Lieut. Hilary H. Royall to be a lieutenant commander in the Navy from the 4th day of March, 1911, to fill a vacancy.

Lieut. Samuel B. Thomas to be a lieutenant commander in the Navy from the 8th day of March, 1911, to correct the date from which he takes rank, as confirmed on July 6, 1911.

Lieut. Frederick J. Horne to be a lieutenant commander in the Navy from the 19th day of May, 1911, to correct the date from which he takes rank, as confirmed on June 27, 1911.

Lieut. Edgar B. Larimer to be a lieutenant commander in the Navy from the 14th day of June, 1911, to correct the date from which he takes rank, as confirmed on August 5, 1911.

Lieut. Daniel P. Mannix to be a lieutenant commander in the Navy from the 13th day of July, 1911, to fill a vacancy.

Medical Inspector Oliver Diehl to be a medical director in the Navy from the 20th day of July, 1911, to fill a vacancy.

Surg. Charles H. T. Lowndes to be a medical inspector in the Navy from the 20th day of July, 1911, to fill a vacancy.

Asst. Civil Engineer Carroll Paul, with the rank of ensign, to be an assistant civil engineer in the Navy with the rank of lieutenant (junior grade) from the 13th day of March, 1911, to fill a vacancy.

Asst. Civil Engineer Glenn S. Burrell, with the rank of ensign, to be an assistant civil engineer in the Navy with the rank of lieutenant (junior grade) from the 5th day of May, 1911, to fill a vacancy.

Asst. Civil Engineer Ralph Whitman, with the rank of ensign, to be an assistant civil engineer in the Navy with the rank of lieutenant (junior grade) from the 18th day of June, 1911, to fill a vacancy.

POSTMASTERS.

ARKANSAS.

James H. Elkins to be postmaster at Blytheville, Ark., in place of Oscar D. Sanborn, removed.

ILLINOIS.

S. M. Kaisinger to be postmaster at Milledgeville, Ill., in place of Joseph Lawton, deceased.

IOWA.

Fred W. Colvin to be postmaster at Correctionville, Iowa, in place of Adelbert J. Weeks. Incumbent's commission expired December 13, 1910.

KANSAS.

C. C. Clevenger to be postmaster at Osawatomie, Kans., in place of Edward H. Wilson, removed.

MASSACHUSETTS.

John Williamson to be postmaster at Gilbertville, Mass., in place of Charles C. Phelps, resigned.

MISSOURI.

F. K. Allen to be postmaster at Craig, Mo., in place of Philip A. Thompson, removed.

NEW JERSEY.

Frank M. Buckles to be postmaster at Rutherford, N. J., in place of William H. Mackay. Incumbent's commission expired February 28, 1911.

Joseph J. Kennedy to be postmaster at Hoboken, N. J., in place of Edward W. Martin. Incumbent's commission expired June 5, 1910.

NEW YORK.

Roscoe C. Terpening to be postmaster at Richmondville, N. Y. Office became presidential July 1, 1911.

OKLAHOMA.

Bert Campbell to be postmaster at Waukomis, Okla., in place of Hugh Scott, resigned.

OREGON.

Clyde K. Brandenburg to be postmaster at Klamath Falls, Oreg., in place of Robert A. Emmitt, resigned.

PENNSYLVANIA.

David O. Lardin to be postmaster at Masontown, Pa., in place of George W. Honsaker. Incumbent's commission expired February 20, 1911.

Samuel H. Williams to be postmaster at Bellefonte, Pa., in place of Thomas H. Harter. Incumbent's commission expired February 28, 1911.

WISCONSIN.

Oscar D. Naber to be postmaster at Mayville, Wis., in place of Henry Kloeden. Incumbent's commission expired April 9, 1910.

CONFIRMATIONS.

Executive nominations confirmed by the Senate August 19, 1911.

SECOND SECRETARIES OF EMBASSIES.

Arthur Hugh Frazier to be second secretary of the embassy at Vienna, Austria.

Willing Spencer to be second secretary of the embassy at Berlin, Germany.

SECRETARY OF LEGATION.

G. Cornell Tarler to be secretary of the legation at Montevideo, Uruguay.

CONSUL GENERALS.

Roger S. Greene to be consul general at Hankow, China.
George Horton to be consul general at Smyrna, Turkey.
Edward D. Winslow to be consul general at Copenhagen, Denmark.

CONSULS.

Hubert G. Baugh to be consul at Saigon, Cochin China.
Homer Brett to be consul at Maskat, Oman.
E. Carleton Baker to be consul at Chungking, China.
Robert T. Crane to be consul at Rosario, Argentine Republic.
Frederick T. F. Dumont to be consul at Guadeloupe, West Indies.
Frank Deedmeyer to be consul at Leghorn, Italy.
George F. Davis to be consul at Ceiba, Honduras.
Charles M. Freeman to be consul at Sydney, Nova Scotia.
Allen Gard to be consul at Charlottetown, Prince Edward Island.
Philip E. Holland to be consul at Saltillo, Mexico.
Charles M. Hathaway to be consul at Puerto Plata, Dominican Republic.
Alexander Heingartner to be consul at Liege, Belgium.
Theodore C. Hamm to be consul at Durango, Mexico.
John F. Jewell to be consul at Vladivostok, Siberia.
Henry Abert Johnson to be consul at Ghent, Belgium.
Milton B. Kirk to be consul at Manzanillo, Mexico.
John E. Kehl to be consul at Saloniki, Turkey.
Graham H. Kemper to be consul at Cartagena, Colombia.
Marion Letcher to be consul at Progreso, Mexico.
Charles L. Latham to be consul at Punta Arenas, Chile.
George B. McGoogan to be consul at Georgetown, Guiana.
William C. Magelssen to be consul at Melbourne, Australia.
Charles K. Moser to be consul at Colombo, Ceylon.
Lester Maynard to be consul at Harbin, China.
Robert Brent Mosher to be consul at Plauen, Germany.
Isaac A. Manning to be consul at Barranquilla, Colombia.
Albert W. Pontius to be consul at Dalny, Manchuria.
John A. Ray to be consul at Maracaibo.
Emil Sauer to be consul at Bagdad, Turkey.
Gaston Schmutz to be consul at Aguascalientes, Mexico.
Maddin Summers to be consul at Chihuahua, Mexico.
Walter H. Schulz to be consul at Aden, Arabia.
Ralph H. Totten to be consul at Trieste, Austria.
Edwin W. Trimmer to be consul at Niagara Falls, Canada.
Thomas W. Voetter to be consul at La Guaira, Venezuela.
Adolph A. Williamson to be consul at Antung, China.

PROMOTIONS IN THE ARMY.

ORDNANCE DEPARTMENT.

Lieut. Col. J. Walker Benét to be colonel.
Maj. Odus C. Horney to be lieutenant colonel.

CAVALRY ARM.

Lieut. Col. John C. Gresham to be colonel.
Lieut. Col. Walter L. Finley to be colonel.
Maj. Harry C. Benson to be lieutenant colonel.
Maj. George H. Sands to be lieutenant colonel.
Capt. Charles A. Hedekin to be major.
Capt. Francis J. Koester to be major.
First Lieut. Casper W. Cole to be captain.
First Lieut. Edmond R. Tompkins to be captain.
Second Lieut. George Dillman to be first lieutenant.
Second Lieut. Philip J. R. Kiehl to be first lieutenant.
Second Lieut. William C. F. Nicholson to be first lieutenant.

COAST ARTILLERY CORPS.

Lieut. Col. Adelbert Cronkhite to be colonel.
Maj. Herman C. Schumm to be lieutenant colonel.
Capt. James F. Brady to be major.
First Lieut. Lewis Turtle to be captain.
Second Lieut. Charles A. Eaton to be first lieutenant.
Second Lieut. Rollin L. Tilton to be first lieutenant.
Second Lieut. James L. Dunsworth to be first lieutenant.
Second Lieut. Dana H. Crissy to be first lieutenant.
Second Lieut. Francis G. Delano to be first lieutenant.

Second Lieut. Raphael R. Nix to be first lieutenant.
Second Lieut. James L. Walsh to be first lieutenant.
Second Lieut. Henry H. Malven, jr., to be first lieutenant.
Second Lieut. Edward L. Kelly to be first lieutenant.
Second Lieut. Thruston Hughes to be first lieutenant.
Second Lieut. Charles B. Meyer to be first lieutenant.
Second Lieut. Frederick A. Mountford to be first lieutenant.
Second Lieut. Fordyce L. Perego to be first lieutenant.
Second Lieut. Philip S. Gage to be first lieutenant.
Second Lieut. Monte J. Hickok, to be first lieutenant.
Second Lieut. Frederick Hanna, to be first lieutenant.
Second Lieut. Theodore M. Chase, to be first lieutenant.
Second Lieut. William C. Koenig to be first lieutenant.
Second Lieut. Harry W. Stephenson to be first lieutenant.
Second Lieut. John J. Thomas to be first lieutenant.
Second Lieut. Herbert H. Acheson to be first lieutenant.
Second Lieut. Willis Shippam to be first lieutenant.
Second Lieut. Frank A. Buell to be first lieutenant.
Second Lieut. Loren H. Call to be first lieutenant.
Second Lieut. Frank D. Applin to be first lieutenant.

TO BE CHAPLAIN WITH RANK OF MAJOR.

Chaplain Thomas J. Dickson to be chaplain with the rank of major.

PAY DEPARTMENT.

Maj. James B. Houston to be Deputy Paymaster General with the rank of lieutenant colonel.

APPOINTMENTS IN THE ARMY.

MEDICAL RESERVE CORPS.

To be first lieutenants.

Henry Leland Akin.
John Barnwell Elliott, jr.
Cyrinque Joseph Gremillion.
Robert Russell Hollister.
Albert John Hoskins.
James Kenan.
Robert Thomas Legge.
Edgar Webb Loomis.
Charles McVea.
Francis Marion Pottenger.
Herbert Wellington Taylor.
Charles Ellsworth Treibly.
Louis Joseph Aloysius Sebille.

PROMOTIONS IN THE NAVY.

Capt. Bradley A. Fiske to be a rear admiral.
Lieut. Commander Noble E. Irwin to be a commander.
Lieut. (Junior Grade) William A. Hall to be a lieutenant.
Lieut. (Junior Grade) Thomas Withers, jr., to be a lieutenant.
Lieutenant commanders to be commanders:
James F. Carter, and
George C. Day.
Lieutenants to be lieutenant commanders:
Chauncey Shackford,
Edward S. Jackson,
Henry L. Wyman,
Hilary H. Royall,
Samuel B. Thomas,
Frederick J. Horne,
Edgar B. Larimer, and
Daniel P. Mannix.
Medical inspector to be a medical director:
Oliver Diehl.
Surgeon to be a medical inspector:
Charles H. T. Lowndes.
Assistant civil engineers, rank of ensigns, to be assistant civil engineers, rank of lieutenants, junior grade:
Carroll Paul.
Glenn S. Burrell, and
Ralph Whitman.

POSTMASTERS.

COLORADO.

Robert E. Hanna, Windsor (late New Windsor).

GEORGIA.

George E. Ricker, Fitzgerald.

ILLINOIS.

Cornelius T. Beekman, Petersburg.
Henry P. Hurd, Odin.

INDIANA.

Francis E. Garn, Plymouth.

IOWA.

Ed L. Richardson, Cumberland.

KANSAS.

C. C. Clevenger, Osawatomie.
C. K. Gerard, Leoti.

MAINE.

Thomas E. Wilson, Kittery.

NEBRASKA.

John Fenstermacher, jr., Cedar Bluffs.

NEW JERSEY.

F. M. Buckles, Rutherford.
J. J. Kennedy, Hoboken.

PENNSYLVANIA.

D. O. Lardin, Masontown.
S. H. Williams, Bellfonte.

SOUTH DAKOTA.

Joseph P. Purintun, De Smet.

REJECTION.

Executive nomination rejected by the Senate August 19, 1911.

POSTMASTER.

SOUTH DAKOTA.

Ernest B. Yule, Alexandria.

HOUSE OF REPRESENTATIVES.

SATURDAY, *August 19, 1911.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

O Thou, who art supremely great and glorious, light-giving, life-sustaining Potentate, we humbly acknowledge our indebtedness to Thee for all that we are and all that we can hope to be. We realize our weakness, our frailty, our sins. Have mercy upon us, we beseech Thee, and pardon our infirmities, and out of Thine abundance strengthen us for the remaining duties of life, that we may fulfill our mission upon the earth and pass serenely on at the appointed time, fully prepared for whatever awaits us in the great beyond. And Thine be the praise, through Jesus Christ, our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Curtiss, one of its clerks, announced that the Senate had passed joint resolution of the following title, in which the concurrence of the House of Representatives was requested:

Joint resolution (S. J. Res. 57) to admit the Territories of New Mexico and Arizona as States into the Union upon an equal footing with the original States.

ENROLLED BILLS SIGNED.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker signed the same:

H. R. 13276. An act to provide for the disposal of the present Federal building site at Newark, Ohio, and for the purchase of a new site for such building; and

H. R. 13391. An act to increase the cost limit of the public building at Lynchburg, Va.

EXPENSES OF THE PHILIPPINE ISLANDS.

Mr. COX of Ohio. Mr. Speaker, I desire to submit a motion to discharge the Committee on Expenditures in the War Department from the further consideration of House resolution 25, calling upon the President for information with respect to the Philippines.

The SPEAKER. The gentleman from Ohio moves to discharge the Committee on Expenditures in the War Department from the further consideration of the resolution which the Clerk will report.

The Clerk read as follows:

House resolution 25.

Resolved, That the President of the United States be, and he is hereby, requested to submit a statement to the House showing the cost which has accrued to the Government of the United States, from the beginning of, and as the result of, the occupation of the Philippine Islands by the United States.

Mr. MANN. Mr. Speaker, I reserve a point of order on that.

The SPEAKER. The gentleman from Illinois [Mr. MANN] reserves a point of order.

Mr. COX of Ohio. I would suggest that the gentleman make the point of order, because the motion itself is not debatable.